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Current Topics.

Law Revision.

LAWYERS are frequently, though quite ungenerously, assumed to seek the perpetuation of old rules in which they have been nurtured, regardless of the fact that they may run counter to what the ordinary person would consider fair dealing between man and man. For the most part, lawyers, like others, have to accept the law as they find it, but it is worth emphasising that most of the reforms, both in its substance and in its form, have emanated from members of the profession. The Law Revision Committee, during the few years of its existence, has been able to suggest various reforms which have proved of immense value as bringing rules of law more into consonance with its moral aspect. Now the committee has made a very practical proposal, namely, the modification of the rule laid down, no doubt correctly in strict law but on lines which many thought exceedingly harsh, in *Chandler* v. *Webster* [1904] 1 K.B. 493, a case arising out of the postponement of the Coronation Procession in June, 1902, deciding that no action would lie to recover back money paid by the defendant to the plaintiff for the right to view the royal procession from his window. There, it will be remembered, the Court of Appeal decided that the defendant was entitled not only to retain the money paid on account, but was entitled also to recover the balance, the right to which had, by the terms of the contract, accrued prior to the date when the contract became impossible of performance. No doubt as the law stood, and still stands, the decision was correct, but nevertheless it could not fail to strike the layman, particularly the defendant in the action, and lawyers as well, as difficult to reconcile with justice. Sharing this view the Law Revision Committee propose that the rule should be modified by providing that in such circumstances the money paid prior to the frustration of the contract shall be recoverable, but subject to the deduction of such sum as represents a fair allowance for expenditure incurred by the payee for the purpose of performing the contract. Further, when at the moment of frustration the contract has been in part performed and that part is severable, the proposed rule is to apply only to that part of the contract which remains unperformed.

The Recommendations.

THE recommendations concerning this important matter should be set out in detail. They are to the effect that the following rules shall apply when performance of a contract has been frustrated in whole or in part and any money has been paid, or has been agreed to be paid, at a time prior to the frustration: (1) Money paid by the one party to the other in pursuance of the contract shall be recoverable, but subject to a deduction of such sum as represents a fair allowance for expenditure incurred by the payee in the performance of or for the purpose of performing the contract. In fixing the amount of such deduction the court shall include an allowance for overhead expenses, but shall also take into account any benefits accruing to the payee by reason of such expenditure, and the amount recovered shall not exceed the total of any money so paid or agreed to be paid under the contract. Loss of profit shall in no case be taken into consideration. (2) When at the moment of frustration the contract has been performed in part and the part so performed is severable, these rules shall apply only to that part of the contract which remains unperformed, and shall not affect or vary the price or other pecuniary consideration paid or payable in respect of that part of the contract which has been so performed. (3) For the purpose of these recommendations no regard shall be had to amounts receivable under any contracts of insurance. Finally, it should be observed that the committee does not recommend any alteration in the law relating to freight *pro rata itineris*. It is recognised that the rule has been frequently criticised, but considered that it has become so firmly fixed that it would be undesirable to alter it. For the same reason no alteration in the law relating to advance freight is favoured, except in the case of hire paid in advance under a time charter, which, it is considered, should be recoverable in the event of frustration of the adventure in the same manner and to the same extent as other payments in advance made under a contract. The report of the committee is published as a White Paper by H.M. Stationery Office (Cmd. 6009, price 2d. net).

Statements in Affidavits.

ATTENTION should be drawn to a statement made by SIMONDS, J., in an action which came before him on Tuesday on a procedure summons for judgment under Ord. XIV, on which the defendant applied for leave to defend, and filed an affidavit stating the grounds for his defence. The action was for the recovery of possession of mortgaged premises, the defendant having attorned tenant to the plaintiffs at a nominal rent, and the latter having given notice determining the tenancy. According to the report of the matter in *The Times*, the learned judge said that the defendant's affidavit contained a paragraph in which the statement was made that, by false and fraudulent representations that the property was a sufficient security for the advance, and was well built and of good materials, the building society wilfully and fraudulently misled the defendant into accepting a conveyance of the property. A charge of that general kind, the learned judge continued, was one which ought not to find a place in any affidavit which was relied on for leave to defend an action. He hoped that it would be the last time that he or any other judge of that division would see a paragraph of that kind in an affidavit which was intended to found leave to defend an action, and he was glad to have an opportunity of saying in open court what he had already said in chambers.

The Conveyancing Charges Rules.

READERS will have received, or be acquainted with the contents of, the Conveyancing Charges Rules, a copy of which has been sent by The Law Society to every practising solicitor. It will be recalled that certain resolutions were passed at the Provincial Meeting of The Law Society which was held at Exeter in 1937, urging upon the Council to take into consideration the desirability of establishing a general minimum scale of charges and inviting the Council to formulate a practice rule to provide that breach of a rule or scale laid down by a provincial law society should be *prima facie* evidence of professional misconduct. Moreover, a resolution passed by the Associated Provincial Law Societies in December, 1937, gave expression to the desirability of setting up local prevailing scales of charges and of standardising such scales as far as possible both as to amount and conditions, and urging that the Council should secure without delay the enforcement of local minimum scales. Different opinions may well be entertained, and doubtless will be entertained, both as regards the principle involved and the details of the draft rules, but there can be no two opinions as to the wisdom of the Council's action in submitting them to practitioners, and we venture to suggest that the latter will be well advised to indicate their views to the Council within the time prescribed.

Contracts and Members of Local Authorities.

ATTENTION may be drawn to some interesting provisions in the London Government Bill which is now being considered by a joint committee of both Houses of Parliament. These are to the effect that a person with a direct or indirect interest in any contract or work in which the London County Council is concerned shall be disqualified from election to the council, and that a member of that council shall not vote on or take part in discussions of matters in which he has a direct or indirect pecuniary interest. In the case of a Metropolitan borough council, the Bill provides that a member who is a shareholder in a joint stock company shall not vote on any question in which the company is interested. It was urged by Mr. A. V. ALEXANDER that the provisions should be brought into line with those of the Local Government Act, 1933, under which dispensation might be granted where the number of members disabled would impede the transaction of business or where the public interest required it (*ibid* s. 76 (8)): and by Mr. HERBERT MORRISON that the provision of that Act would not be workable if applied to the London County Council owing to the complexity and the magnitude of its purchasing operations. Consideration of the provisions was postponed to enable the Metropolitan boroughs to be represented if they wished. It will be remembered that the basic provision of the Local Government Act, 1933, is that contained in s. 76 (1), which provides that if a member of a local authority has any pecuniary interest, direct or indirect, in any contract or proposed contract or other matter, and is present at a meeting of the local authority at which the contract or other matter is the subject of consideration, he shall at the meeting, as soon as practicable after the commencement thereof, disclose the fact, and shall not take part in the consideration or discussion of, or vote on any question with respect to, the contract or other matter.

Country Houses and the National Trust.

A STATEMENT was made by Mr. CYRIL RADCLIFFE, K.C., who appeared with Mr. HUMPHREY H. KING for the National Trust, before the Select Committee of the House of Lords to which, as already indicated in these columns, the Bill promoted by the National Trust to obtain further powers in respect of the transfer of land to the Trust has been referred. The committee met under the chairmanship of LORD ROMER. Mr. RADCLIFFE recalled that in 1934 the National Trust started its country house scheme, but did not possess and did not expect to get funds which would enable it to maintain these beautiful and costly structures, and the gardens and grounds surrounding them, which were an essential part of their charm. To be feasible, therefore, the scheme must make provision for endowments which would yield an income sufficient to enable the Trust to carry out the necessary work of repair and maintenance. The Settled Land Act did not enable the limited owner to provide, gratuitously or for some consideration, endowments for this purpose, and so the Bill had been put forward. Under the clauses which had been redrafted since the second reading, a tenant for life would be empowered to make grants of three kinds of value: (1) the mansion house with its gardens and pleasure grounds; (2) any other lands which were required to go with it for amenity; and (3) an endowment sufficient for maintenance. The endowment might be in the form of an annual sum, or something equivalent to a rentcharge charged upon the rest of the settled land or part of the rest of the settled land, the income from which would be sufficient to discharge the duty of repair and maintenance. In answer to questions from LORD ROMER, it was indicated that the annual sum would be charged upon land or buildings, and that the Trust would be responsible for the repairs, the intention being that the endowment should provide out of its income for the National Trust the moneys required for the purpose.

Blood Tests.

AN important aspect of the problem arising out of the proposals contained in the Bastardy (Blood Tests) Bill was recently dealt with by Mr. L. R. DUNNE, the Metropolitan magistrate, in the course of evidence given before the Select Committee of the House of Lords which is considering the measure. The learned magistrate urged that a compulsory blood test, ordered on the court's own motion, involved an interference with the person and liberty of the subject. If the defendant, who himself submitted to a test, made the request, the requirements of justice might properly be said to override such an objection; but an order made on the court's own motion was an order made without request to free citizens engaged in civil litigation, directing them to submit their bodies to some medical interference. It was very desirable that defendants should have the opportunity, furnished by such tests, of clearing themselves; but the speaker leaned to the view that orders for blood tests should only be made at the request of a defendant. The possibly inconclusive character of the data obtainable by the tests was also emphasised. There was, it was said, a very real danger that, where the test did not positively exclude the defendant

from paternity, some courts might be influenced by it and would treat it as a quasi corroboration. It should be made clear that inconclusive tests had no value at all as evidence, and in order to exclude the danger just referred to, it was urged that the court should hear the case on its merits and adjudicate provisionally before any request for a test were entertained. If the man were excluded, the adjudication would be discharged. Mr. DUNNE thought that tests might reduce the number of frivolous cases, and stated that in nearly every defended case perjury was committed. Evidence was also given by Mr. F. D. LEVY, vice-president of the Medico-Legal Society, who advocated the giving of the result of tests at the beginning of proceedings; by Mr. A. C. D. ENSOR, Clerk of the London Sessions, who expressed agreement with the principles of the Bill; by Dr. G. L. TAYLOR, of the Galton Laboratory, London University, who emphasised the accuracy with which the tests were capable of being conducted; and by Mr. MATHEW ARNOLD, who thought that the ideal method would be for a compulsory test to be taken of every child to enable the blood group to be registered and to be available for pathological purposes and blood transfusion when required for police or affiliation purposes.

The Administration of Justice (Emergency Provisions) Bill

THE Administration of Justice (Emergency Provisions) Bill was read a second time in the House of Lords on Tuesday. The main contents of the measure were indicated in our last issue (p. 384) and need not be repeated, but the information may be supplemented by drawing attention to certain other parts of the Bill. Clause 8 provides that no question arising in any civil proceedings in the High Court or any inferior court of civil jurisdiction shall be tried with a jury, and no writ of inquiry for the assessment of damages or other claim by a jury shall issue, unless the court or a judge is of opinion that the question ought to be tried with a jury, or, as the case may be, the assessment ought to be made by a jury, and makes an order to that effect. The same clause suspends s. 6 of the Administration of Justice (Miscellaneous Provisions) Act, 1933, s. 91 of the County Courts Act, 1934, s. 19 of the Administration of Justice Act, 1925, and paras. (*c*), (*d*) and (*e*) of s. 13 (2) of the Coroners (Amendment) Act, 1926. The Bill provides, moreover, for the reduction of the number required for a jury from twelve to seven, except in cases of murder and treason, and raises the age limit for jurymen from sixty to sixty-five. The period for which an accused person may be remanded is extended from eight to twenty-one days, consequential amendments being effected in the Indictable Offences Act, 1848, as amended by s. 20 (2) of the Criminal Justice Administration Act, 1914. It is provided that the proposed Act shall come into operation "on such date as His Majesty may by Order in Council appoint, being a date on which it appears to His Majesty, having regard to the outbreak or probability of war, that it is expedient that this Act should come into operation." At any time after the Act has come into operation the Crown is empowered by Order in Council to declare that, subject to any temporary and transitional provisions contained in the Order, it is no longer necessary that the Act shall continue in force; and it is provided that at the end of the day on which such an Order is made the Act shall expire, except as regards things previously done or omitted to be done thereunder and subject to any such provisions.

Recent Decisions.

IN *Hanson* v. *Wearmouth Coal Co. Ltd. and Another* (p. 397 of this issue), the Court of Appeal (SCOTT, CLAUSON and GODDARD, L.JJ.) upheld a decision of HILBERY, J., to the effect that a gas company was liable to the occupier of premises in respect of damage caused by an explosion of gas due to a fractured main, and that a coal company, whose underground workings had caused the fracture, and which was empowered to let down the surface, was not so liable. The former company was liable on the footing of the principle in *Rylands* v. *Fletcher*, L.R. 3 H.L. 330, not being within the exception established by *Rickards* v. *Lothian* [1913] A.C. 263. The coal company was not liable because there existed no proximate relationship between it and the plaintiff: see *Donoghue* v. *Stevenson* [1932] A.C. 562.

In *Re David Moseley and Sons, Ltd.; Moseley* v. *The Company* (*The Times*, 12th May), SIMONDS, J., held where there were only two ordinary directors, neither of them retired from office under the articles of association of a company which provided that at every general meeting one-third of the directors (other than the governing directors and managing director or directors), or if their number was not a multiple of three, then the number nearest to but not exceeding one-third, should retire.

In *Donovan* v. *National Amalgamated Approved Society* (p. 400 of this issue), a Divisional Court (LORD HEWART, C.J., and HUMPHREYS and LEWIS, JJ.) reversed the decision of an arbitrator and held that the plaintiff's deceased husband had given sufficient proof to the employment exchange that he was available for but unable to obtain employment under s. 3 (3) (*b*) of the National Health Insurance Act, 1924, so as to make him an insured person under that statute, as since amended, and entitle the plaintiff to a widow's pension. During the material period the deceased person had taken to the local employment exchange each week his insurance card which was "franked" by an officer of the Ministry of Labour.

In *Gaumont British Distributors, Ltd.* v. *Henry* (*The Times*, 13th May), a Divisional Court (LORD HEWART, C.J., and HUMPHREYS and LEWIS, JJ.) considered the effect of s. 1 (*a*) of the Dramatic and Musical Performers' Protection Act, 1925, which provides that a person shall be guilty of an offence if he "knowingly . . . makes any record directly or indirectly from or by means of the performance of any dramatic or musical work without the consent in writing of the performers . . ." A metropolitan magistrate found, in answer to a question put to him by the Divisional Court whether the appellants knew at the time of the alleged offence that the consent in writing of the respondent (the member of a band) had not been obtained, that the appellants had never applied their minds to the question because their general manager was ignorant of the requirements of the Act, and the Divisional Court held that in these circumstances no offence had been committed inasmuch as the word "knowingly" applied not only to the word "makes" but also to the words "without the consent in writing of the performers."

In *Butler* v. *The King* (*The Times*, 13th May), the Judicial Committee of the Privy Council held that a court sitting as the Court of Criminal Appeal of Trinidad and Tobago, which had dismissed the appellant's appeal against a conviction of sedition passed on him by the Supreme Court of the same locality, had not been duly constituted according to the provisions of the Criminal Appeal Ordinance, 1931, having regard to the fact that the court included two acting judges under s. 7 of the Judicature Ordinance.

In *Attorney-General* v. *Rochdale Canal Co.* (*The Times*, 17th May), the Court of Appeal (Sir WILFRID GREENE, M.R., and FINLAY and LUXMOORE, L.JJ.) upheld a decision of BENNETT, J., to the effect that the supply of water by the defendants to a railway company was *ultra vires* the Rochdale Canal Act, 1899. A report of the proceedings before BENNETT, J., appeared in our issue of 3rd December 1938 (82 SOL. J. 971).

In *Onesimus Dorey & Sons, Ltd.* v. *Headley's Wharf, Ltd., and William Ashby, Ltd.* (p. 397 of this issue), the Court of Appeal (MACKINNON and DU PARCQ, L.JJ., and MACNAGHTEN, J.) upheld a decision of BRANSON, J., who had dismissed the plaintiffs' action in respect of damages sustained by their vessel while lying alongside certain wharves. This case, in the first instance, was reported in our issue of 18th February last (83 SOL. J. 134).

Criminal Law and Practice.

A DEFECT IN A STATUTE.

At Leeds Assizes recently a plea of guilty by a youth of nineteen years of age to a charge of indecent assault on a girl of under sixteen years of age revealed what Mr. Justice Cassels characterised as "clearly an error in the law" (*The Times*, 6th May). In mitigation of the offence it was urged that the accused was honest in his belief that the girl was over sixteen years of age. In fact she looked older than sixteen.

It will be recalled that the Criminal Law Amendment Act, 1922, s. 2, as amended by the Criminal Law Amendment Act, 1928, s. 1, provides: "Reasonable cause to believe that a girl was of or above the age of sixteen years shall not be a defence to a charge under ss. 5 or 6 of the Criminal Law Amendment Act, 1885 . . . provided that in the case of a man of twenty-three years of age or under the presence of reasonable cause to believe that the girl was over the age of sixteen years shall be a valid defence on the first occasion on which he is charged with an offence under this section."

As the law stood, said counsel for the defence, the accused was worse off than if he had committed the full offence. In that event, being under twenty-three and having reason to believe the girl older than sixteen, he would have had a perfectly good defence. Mr. Justice Cassels bound the accused over, observing that despite repeated recommendations from the Court of Criminal Appeal the mistake was allowed to persist, and looked like going on persisting.

Unfortunately, this is only too true. The lacuna in the statute was discovered as early as March, 1923, when the present President of the Probate, Divorce and Admiralty Division, arguing on behalf of an appellant, said that to hold that the defence under the proviso to s. 2 was not open to a person charged with indecent assault would be to reduce the enactment to an absurdity. "It is not the duty of the court to make the law reasonable" was the reply of Avory, J., in delivering the judgment of the court dismissing the appeal, "but to expound it as it stands, according to the real sense of the words" (*R.* v. *Forde* [1923] 2 K.B. 400).

This judgment, however, contains a clear protest against the illogical results of the Act. "The result of this legislation," said Avory, J., "is that a boy who is tempted and induced to have carnal knowledge of a girl who misrepresents herself to be over sixteen, and who appears to be so, has no possible answer if he is charged with indecent assault and not with the full offence." Another undesired result of the Act, according to Avory, J., was "to afford a new defence to a man under twenty-three years of age who has carnal knowledge of an idiot or imbecile female contrary to sub-s. (2) of s. 5 of the Criminal Law Amendment Act, 1885, a result which was probably never intended, seeing that the object of the Act of 1922 was to curtail and not to extend the defences which were previously open to the accused."

In 1928 in *R.* v. *Laws*, 21 Cr. App. Rep. 45, the Court of Criminal Appeal characterised it as a grotesque state of affairs "that the law offers a defence upon the major charge, but excludes that defence if the minor charge is preferred." Avory, J., had said in passing sentence of four months' imprisonment: "Some day, I hope, somebody will have the sense to remedy this state of things." On appeal the sentence was reduced to one day's imprisonment. In 1929 in *R.* v. *Keech*, 21 Cr. App. Rep. 131, the Act was described as "this amazing legislation," but the Court of Criminal Appeal refused to accede to a suggestion that it should give a direction whether a judge ought never to pass a more than nominal sentence in cases of that kind, as each case depended on its own facts. (See also *R.* v. *Maughan* (1934), 24 Cr. App. Rep. 130.)

This "grotesque" and "amazing" Act is still on the statute book, and in these strenuous days it will no doubt have to wait its turn with other items of law revision as a matter which is of no immediate urgency. In the meantime in appropriate cases the difficulty can be and is frequently met by inserting counts on the major charge only.

Undue Influence and Spiritual Advisers.

It is generally accepted that the doctrine of undue influence operates against a spiritual adviser in the same way as it does against a parent and a solicitor and any other person upon whom is cast the onus of disproving undue influence. The relationship of religious adviser or superior and devotee is comparable to that of solicitor and client, and parent and child; the dominant party to the relationship is presumed to exercise such a strong influence that a gift to him from the weaker party may be set aside unless the donor is fully protected, for example, by independent advice. The recent case of *Chennells* v. *Bruce*, 83 Sol. J. 136, is an illustration, with unusual facts, of a rule which is supported by few direct decisions, though it is unquestioned.

It appeared that two sisters were believers in spiritualism and came under the influence of the defendant, a woman who acted as medium for her "control," a North American Indian called "Grey Feather." She also gave them what she called spiritual advice and practised faith healing. Part of the advice received from Grey Feather was to "keep on fighting" an accident claim. The claim eventually resulted in £1,500 being paid in settlement in respect of injury to one of the sisters who later died. It further appeared that it was Grey Feather's wish that the defendant should receive £400 of the sum in reward for her services. She revealed that the spirit world had become seriously perturbed at the delay in paying the reward and when Grey Feather, who had become angry, proceeded to advise that the whole would be lost unless the £400 were paid, the co-plaintiff, as one of the executors of her sister, ordered her solicitor to send the money. Hallett, J., ordered the sum to be returned on the ground that "the defendant stood in the relationship of spiritual adviser" to the plaintiff: "A person in the defendant's position, therefore, must not use that position to obtain pecuniary advantage for herself." He regarded it as clear that "the defendant did take advantage of that relationship." Here we find an enunciation of the true principle of undue influence which is not always adopted. It depends on the abuse or misuse for personal ends of a relationship which naturally involves influence of some kind. It is not that the influence is bad in itself, but it comes to be called undue because unduly exercised.

The doctrine is frequently incorrectly explained by saying that the donor's will is overborne by pressure and persuasion, as though it were analogous to duress. But in fact the party influenced usually intends the gift to which he freely gives his consent. He is not coerced but acts voluntarily; the court intervenes because the dominant party has abused his position. As Bowen, L.J., said in the well-known case of *Allcard* v. *Skinner*, 36 Ch. D. 145, which concerned religious influence: "This is not a limitation placed on the action of the donor; it is a fetter placed upon the conscience of the recipient of the gift, and one which arises out of public policy and fair play." The point was well put by Kekewich, J., in the same case: "The law does not exclude influence, nay, it recognises influence as natural and right. Few, if any, men are gifted with characters enabling them to act, or even think, with complete independence of others, which could not largely exist without destroying the foundations of society. But the law requires that influence, however natural and however right, shall not be unduly exercised."

There is no doubt that the check on the power to benefit religious advisers is a proper application of the doctrine

of undue influence, though the two decisions most often quoted are not direct authorities. In *Allcard* v. *Skinner*, the Court of Appeal was prepared to recall a gift by a nun to her superior, the abbess of an Anglican convent, but the claim was barred by lapse of time. In the leading case on the whole subject, *Huguenin* v. *Baseley* (14 Ves. 273), Lord Eldon disallowed a voluntary settlement by a widow on a clergyman who was the agent of the donor, undertaking the management of her temporal affairs, as well as her adviser in spiritual matters. The additional factor of agency is often overlooked in discussions of this case, though it was stressed in the judgment. There was a breach of confidence as well as undue influence. In *Nottidge* v. *Prince* (2 Giff. 246), a woman gave her whole fortune to a man whom she believed to be divinely inspired and who purported to have a divine mission. In rescinding the gift, Stuart, V.C., said: "The grossness of the imposture in the present case has put it far beyond mere spiritual influence." *Morley* v. *Loughnan* [1893] 1 Ch. 736, was decided not on the ground of any presumption of undue influence but because it was proved that the recipient exercised *de facto* influence by reason of a strong personal ascendancy. This ascendancy was obtained partly by his position as "a kind of guardian" of a rich epileptic, and partly by a religious influence which caused the donor to join a religious brotherhood conducted by the recipient.

However, the early case of *Norton* v. *Relly* (2 Eden 286) is an example of simple spiritual influence, though the modern doctrine was not expressly formulated in the judgment. An evangelical preacher in the first years of Methodist revivalism was ordered to return property received from an admiring maiden lady who met most of his expenses and joined him in spiritual exercises. This decision was not referred to in *Huguenin* v. *Baseley*, which is sometimes claimed as the first case of religious undue influence. Lord Northington, in a scathing judgment which reflects the contemporary attitude towards revivalists, refers to "Men who go about in the Apostles' language, and creep into people's dwellings, deluding weak women: men who go about and diffuse their rant and warm enthusiastic notions, to the destruction not only of the temporal concerns of many of the subjects of this realm, but endanger their eternal welfare." The claim that the defendant was not a Methodist but an independent preacher did not avail, for, "he appears to be a subtle sectary, who preys upon his deluded hearers, and robs them under the mask of religion; an itinerant who propagates his fanaticism even in the cold northern counties, where one could scarcely suppose that it could enter." Lord Northington concludes with the biting remark: "I have tried, in the decree I have made, to spoil his independency." The same critical spirit imposed a presumption of undue influence on a spiritualistic medium in *Lyon* v. *Home* (6 Eq. 655). After a few days' acquaintanceship with a widow of seventy-five he induced her to adopt him as her son and to make lavish gifts on him together with a settlement, in the belief that she was fulfilling her husband's wishes. The medium was not allowed to keep his spiritually-gotten gains.

The recent case of spiritualistic influence is a forcible illustration of the view of Lindley, L.J., in *Allcard* v. *Skinner*: "The equitable doctrine of undue influence has grown out of and been developed by the necessity of grappling with insidious forms of spiritual tyranny and with the infinite varieties of fraud. The influence of one mind over another is very subtle, and of all influences religious influence is the most dangerous and the most powerful, and to counteract it courts of equity have gone very far."

Company Law and Practice.

The Retirement of Directors and Filling of Vacancies on the Board.

THE articles which deal with the retirement of directors and their removal from office seldom require to be drafted so as to depart appreciably from common form. The clauses of Table A, beginning with cl. 73, can conveniently be referred to as examples of the common form in these matters, and I propose to consider quite shortly one or two points which may arise in advising a company which has some such articles.

The first directors of a company are usually either appointed by name by the articles or take office under an article declaring the signatories of the memorandum to be the first directors. This is very often only a device for insuring that the company shall have a qualified executive from the moment when it has power to commence business. In some cases the original directors are immediately appointed for life or for some other period, but in most cases it is not desired to do more than fill a gap. Clause 73 of Table A accordingly provides that all the directors shall retire from office at the first ordinary general meeting of the company. This means that the shareholders are able at the first available opportunity to reconstitute the board in accordance with their wishes. Before the first general meeting they could have no say in the matter, and it is therefore desirable that they should have an opportunity of showing whether they have confidence in the abilities of the persons originally selected as directors. In most cases the original directors are of course re-elected without further ado. In the case of a small private company the position is not the same, for there all the members will probably have been consulted beforehand and will have seen the draft articles and may well all have signed the memorandum.

Clause 73 of Table A not only gives the members the right to turn all the directors out of office at the first general meeting, but also limits the term of office of any director appointed at that meeting. At every subsequent ordinary general meeting one-third of the directors, or, if their number is not three or a multiple of three, then the number nearest one-third, have to retire from office. Clause 74 prescribes which particular directors have to retire. Those who have been longest in office since their last election must go, and if two or more became directors on the same day, and they do not all have to go, the question is determined by lot. A director who has to retire under these provisions may be re-elected. In this way the members retain a certain amount of control over the composition of the board, while in practice there will not as a rule be any changes, since retiring directors are more often than not re-elected.

There are two cases dealing with points arising on the construction of articles of this kind to which I now refer. One is a fairly recent decision to which reference was made in these columns when the case was decided. It may still be fresh in the minds of many of my readers, notwithstanding the passage of about three years, but nevertheless I shall be so bold as to draw attention to it again, as it decides a point of practical importance and interest. The case is *Eyre* v. *Milton Proprietary Limited* [1936] 1 Ch. 244. A company had articles in substantially the same form as cls. 73 and 74 of Table A. In particular it was provided that the directors to retire on a certain date "unless the directors agree among themselves, shall be determined by ballot." A question arose as to the meaning of the word "ballot" in this context. On the one hand it was said that ballot meant the same as lot, i.e., a drawing; on the other it was said that it meant a secret vote. It was admitted that, context apart, ballot may indicate either a secret vote or a drawing by lot. Eve, J., decided that in the context it meant a secret vote, but his decision on this point was

reversed by the Court of Appeal, which, after hearing references to the history of the word in connection with company legislation, held that it meant a drawing by lot. Clause 74 of Table A uses the word lot and the corresponding clause in the 1908 Table A was also lot. Before that the word ballot had been used in the 1862 Table A, following in this respect a section of the Companies Clauses Consolidation Act, 1845. It is now clear that where the articles of a company require a ballot to be taken to determine which directors shall resign, that means that there must be a drawing by lot. It will be readily observed that this is the more convenient interpretation, since a secret vote might result in an equality of votes and so bring about a deadlock.

The second case to which I want to refer is the older case of *In re Consolidated Nickel Mines Limited* [1914] 1 Ch. 883. The trouble in that case arose because the articles provided that all the directors should retire at the ordinary meeting in a certain year, but no ordinary meeting was held in that year or in the next year. The directors continued to act as directors, and subsequently claimed in the liquidation of the company to be entitled to remuneration on the footing that they had not ceased to be directors, because there had been no ordinary meeting in the particular year at which they should have retired. The liquidator objected to the claim, and contended that the directors vacated office on the last day of the year, that being the last day on which a meeting of the company for that year could have been held. This contention was upheld by the court. The effect of the decision is that a director who is bound to retire at a meeting to be held in a certain year in effect holds office until the end of that year or until the earlier date on which the meeting for that year may be held.

As I have already said, a retiring director is generally eligible for re-election. Moreover, cl. 76 of Table A provides that he shall be automatically re-elected if no other person is appointed to fill his place at the meeting. The meeting can, however, resolve not to fill the place at all. A question may arise as to the true position where the articles do not expressly provide (as cl. 76 does) that a director shall not become automatically re-elected if the meeting resolves not to fill the vacancy. In other words, what happens when the articles merely provide that a retiring director is re-elected if no other person is appointed in his place? Does this mean that he can continue in office until replaced with the result that the company in general meeting can only get rid of him by appointing someone else and cannot reduce the number of the directors merely by refraining from re-electing him? This question was discussed in *Spencer* v. *Kennedy* [1926] Ch. 125. It appears from that case that the retiring director is only automatically re-elected in a case where the meeting completely forgets that it has to fill the office vacated by him. If, on the other hand, the question of filling that office is discussed and the meeting designedly refrains from filling it, then the retiring director is not re-elected.

An article in much the same form as cl. 76 of Table A was considered in *In re Great Northern Salt and Chemical Works*, 44 Ch. D. 472. Stirling, J., explained its operation: " . . . if for any reason the meeting . . . at which the election of directors ought to take place, does not proceed validly to fill up the places of the vacating directors, then they are to continue in office." This seems plain enough. To avoid difficulties, the article should refer to the company's power deliberately to resolve not to fill up a vacancy.

Neither articles in the form of cl. 76 of Table A nor articles in the form of cl. 73 prescribing compulsory retirement of a director at the first ordinary meeting, and subsequently, by rotation, apply to *de facto* directors. In *John Morley Building Company* v. *Barras* [1891] 2 Ch. 386, the facts were as follows: A company was registered without any articles, and accordingly Table A of the Companies Act, 1862 (the Act operative at the relevant date), applied. That Table A contained provision similar to the provisions of cls. 73 and 76 of the present Table A. A first general meeting of the company was held and adjourned, but no directors of the company were appointed either at the original or the adjourned meeting. The subscribers of the memorandum did not appoint any directors, but four of them together with four other persons acted as directors. Later on another meeting was held, but was adjourned without anything being done. Finally, at a later meeting, the defendants in the action were appointed directors at the instance of a majority, but the persons who had been acting as directors issued a writ asking for an injunction to restrain the defendants from acting as such. The substantial point was whether the defendants were directors of the company, their opponents, the *de facto* directors, contending that they had not been properly appointed. The position of the *de facto* directors was in turn called in question. It was said that they were only *de facto* directors down to the holding of the first meeting, but that when that meeting was held they ceased under the articles to be directors. Further, it was said that as no persons were appointed directors to fill the vacancies, the *de facto* directors were automatically re-elected. Stirling, J., in his judgment, asked whether the article providing for the re-election of directors in this way applied to *de facto* directors. " It seems to me that it applies only to those directors who have been validly appointed in pursuance of the articles; when no appointment at all has been made, the article either does not apply at all, or if it does it only provides that the vacating directors shall continue in office, and does not confer on them any better title to office than they had before. Therefore, the *de facto* directors do not derive any authority from that clause as against directors duly appointed."

A Conveyancer's Diary.

[CONTRIBUTED.]

Restrictive Covenants Again.

Lawrence v. *South County Freeholds, Ltd.* [1939] W.N. 167 is another restrictive covenant case. As reported in the *Weekly Notes* it presents various points of interest but is rather difficult to understand. The facts were as follows: the plaintiff was estate owner in fee simple of Blackacre; the first defendants were the owners in fee of Whiteacre, the adjoining house. The second and third defendants were lessees and occupiers of Whiteacre.

Blackacre and Whiteacre had, prior to 1844, been included in a single estate, which had been laid out and developed in that and the two following years by the then owner. The method employed was that for each plot he granted a building lease and later conveyed the fee. The leases apparently contained identical covenants, and the same covenants were incorporated in the conveyance to the predecessor in title of the first defendants. The material covenant was not to " carry on any trade or business on the premises except only a school or seminary, surgeon or apothecary."

The second and third defendants carried on a school of music and dancing on Whiteacre, which Simonds, J., held to amount to a common law nuisance. He accordingly granted an injunction against them.

The Plaintiffs also sought to make the first defendants liable as assignees of the original covenantor. The learned judge held that what was going on was within the mischief of the covenant. A school of any sort is obviously a business (see, for example, *Kemp* v. *Sober*, 1 Sim. (N.S.) 517; *Doe d. Bish* v. *Keeling*, 1 M. & S. 95; and the observations of Lindley, L.J., in *Rolls* v. *Miller*, 27 Ch. D. 71, at p. 88). The question was whether a school of music and dancing was within the permitted exception " school or seminary." The learned judge held that the exception permitted only schools for boys or girls, but not schools of the class in question.

It appears from the report in *The Times* that something was made of the use of the word "seminary," which was said to import the idea of a girls' school, while "school" meant a boys' school. If this was the meaning of "seminary" a century ago, it goes far, of course, to cut down the meaning of the word "school" with which it was associated in the covenant.

The next question should have been whether there was a breach of the covenant not to *carry on* a business. And it is here that the report seems unsatisfactory. It is stated that it was proved that the first defendants let Whiteacre with the knowledge that the house would be used for a school of music, though not that it would also be used as a school of dancing. They knew, therefore, that the *other defendants* were going to carry on a business in breach of the covenant. And the learned judge is reported as having indicated that that constituted a breach of covenant by the lessors.

But, with great respect, if the covenant was as the report states it to be, the decision can hardly be correct. How can it be said that the lessors carried on any business at all on Whiteacre? They did nothing there; they had let it and were not occupying it at all. It would have been different, of course, if the covenant had been that the premises should not be used for business purposes, or that the covenantor and his successors would not permit them so to be used. If a freeholder were liable on a covenant of the sort there was in this case, merely because his lessee carried on business, with or without his knowledge, there would be no point in the covenant against *permitting* such user which is frequently imposed. It may be, however, that the full report will disclose the explanation of the learned judge's ruling on this point.

The point was not, however, essential to the decision of the case, since the action failed, as against the first defendants, on the ground that there was no "building scheme" and the plaintiffs had, therefore, no right to enforce the covenants. There was evidently no express annexation of the benefit of the covenants to Blackacre, and no express assignment of such benefit. On a consideration of the facts, the learned judge held that there was no building scheme because the rules in *Elliston* v. *Reacher* [1908] 2 Ch. 374 had not been fulfilled. This finding in itself was sufficient to dispose of the case against the first defendants, and also of any case that might have been made upon the covenants against the other defendants, though they were still liable, of course, for the common law nuisance.

Simonds, J., is, however, reported as having added that, quite apart from the particular facts "a building scheme in the modern sense was unknown in 1843, the doctrine being first enunciated by Lord Macnaghten in *Spicer* v. *Martin* (1888), 14 A.C. 12," and that in older days the same result was achieved by deeds of mutual covenant. We may respectfully accept the actual point made by Simonds, J., that in 1843 there were no building schemes in the modern sense. But the reference to *Spicer* v. *Martin* seems somewhat dubious. It is perfectly true that in that case, in 1888, Lord Macnaghten did give the first really authoritative statement of the modern principles which underlie building schemes. But that is not to say that the concept was then entirely new. Like the rest of the law of restrictive covenants, the building scheme doctrine grew rather than was created complete. It seems likely that conveyancers were in the habit of imposing building schemes for something like twenty years before their validity was tested and upheld by the House of Lords in *Spicer* v. *Martin*. For example, the scheme upheld in *Collins* v. *Castle* (1887), 36 Ch. D. 243, was imposed in 1882; that in *Nottingham Patent Brick & Tile Co.* v. *Butler* (1885), 15 Q.B.D. 261; 16 Q.B.D. 778, in 1865; and that in *Gaskin* v. *Balls* (1879), 13 Ch. D. 324, in 1864. And that great conveyancer, Hall, V.C., used the expression "building scheme" in *Renals* v. *Cowlishaw*, 9 Ch. D. 125, 128, as long ago as 1878.

It would be very difficult to say at exactly what point of time or by whom the modern doctrine of building schemes was invented, and it was probably not in existence in 1843. But the cases cited serve to show that it would be quite unsafe to say that no such scheme was ever created before 1888.

One thing must be added. It is often supposed that a "building scheme" is a very easy thing to create, and that it very commonly is created in cases where a person lays out an estate and develops it systematically, taking covenants from purchasers. The contrary is the case. There is no scheme unless the very specific rules in *Elliston* v. *Reacher* [1908] 2 Ch. 374, are fulfilled. All the required elements must be proved to be present, and they very seldom are. Apart from the reported case of *Lawrence* v. *South County Freeholds Ltd.*, two cases have come to my personal knowledge in the last two months in which what looked at first sight very like a building scheme turned out on investigation to be a system of unenforceable covenants. In one case the threatened action on the covenants was discontinued when the full facts were brought to the attention of the advisers of the intending plaintiff; in the other the court has declared, under the Law of Property Act, 1925, s. 84 (2), that there was never any scheme. The latter case was a very good example of the usefulness and comparative cheapness of the procedure under that subsection, to which I have often called attention in this column. If that procedure is boldly and frequently used, a very large proportion of supposed building schemes may be cleared away and an equally large percentage of other restrictive covenants may be decently interred. The procedure is vastly superior in a proper case to arbitration under subsection (1) of the same section or under the Housing Act, since a covenant declared invalid under subsection (2) is cleared right off the title; if resort is had to arbitration the tendency is for the arbitrator merely to modify the covenants. Moreover, the procedure under subsection (2) involves the relatively small amount of trouble incidental to an originating summons in the Chancery Division, while subsection (1) involves a local hearing with witnesses and objectors.

Landlord and Tenant Notebook.

Apportionment and Contribution.

THE recent decision in *Whitham* v. *Bullock* (1939), 83 SOL. J. 358, illustrates the applicability to the special circumstances of apportionment of leasehold premises of the general principles of contribution.

These principles were first exhaustively surveyed in *Dering* v. *Winchilsea* (*Earl of*) (1787), 1 Cox Eq. 318, which arose out of separate bonds given by the plaintiff and the two defendants conditioned for the due performance by the plaintiff's brother of his duty as a collector for some of the duties belonging to the Customs. None of the bonds was executed by the plaintiff and either defendant jointly. The brother having ignored the orders of the Lords of the Treasury to keep the money collected in a special box, and having lost some of it by gambling, the plaintiff was called upon, and now sued the other sureties. Eyre, L.C.B., having examined numerous authorities, held that the right to contribution was founded on general principles of justice, and did not spring from contract. Charging one surety discharged another; *qui sentit commodum sentire debet et onus*; a common right, a common burthen; each ought to contribute to the *onus*.

The importance of that decision lay in the fact that the parties were not parties to one joint bond, and it therefore illustrates the difference between the legal and the equitable right to contribution. The common law insists that the proposed contributor be under a *common* liability *to be sued*; equity, while insisting on legal liability on the plaintiff, does not demand a common liability to be sued.

The limits were illustrated by *Johnson* v. *Wild* (1890), 44 Ch. D. 146, an action by an assignee of part of demised premises against the undertenant of most of the rest, the claim being for contribution of a proportionate part of the rent paid to the lessor under threat of distress. The original lessee had first mortgaged the plaintiff's part to the plaintiff's predecessor in title, the mortgage being by way of assignment. A month later he underlet the defendants' part to their predecessor, and a year later released the rent payable by her in consideration of a lump sum. Both the assignment and the underlease contained covenants by the original and mesne lessee to pay the rent reserved by the (head) lease. But the covenantor got into financial difficulties, in consequence of which the lessor—the plaintiff's landlord and the defendants' superior landlord—threatened to distrain on the plaintiff's part for the whole of the rent. The plaintiff paid three gales and submitted, by a special case, the question whether the defendants were liable to contribute any and what proportion of the rent.

The court declined to extend the principle to cover underlessees, who were not subject to a common demand, and were not in the position of co-sureties. It was mentioned in the judgment that the defendants were not in fact liable for any rent at all (owing to the release), but I think the *ratio decidendi* is the difference in title.

I do not know why the above case was not as much as referred to in *Bonner* v. *Tottenham & Edmonton Permanent Investment Building Society* [1899] 1 Q.B. 161, C.A., for, though it was not a case of apportionment, the same principle was applied or the same limitation imposed. In this case the plaintiffs were original grantees of a lease, which they assigned to an assignee who mortgaged by sub-demise to the defendants before going bankrupt, on which they took possession. The lessor collected the rent from the plaintiff, who sued for the amounts paid, basing his claim on equity. But the court observed that in the absence of any legal default by the defendants he could not succeed at law; while in equity his claim was met by the fact that an underlessee had no such interest in the lease or benefit from the payment as to bring him within the principle.

Now in *Whitham* v. *Bullock* the facts were these. A leaseholder assigned part of the demised premises to the defendant's predecessor and, at a later date, the rest to the plaintiff's predecessors. The rent was duly apportioned on the occasion of the first assignment, and under the second assignment the assignees covenanted to collect the rent of the part first assigned and pay it with the rent of their own part. The defendant ceased paying rent when the houses on her part had been demolished by virtue of orders made under the Housing Acts. The reversioners threatened to distrain upon the plaintiff's part, which consisted of a house, for the rent due from the defendant; he paid three gales, and sued her for the total.

The Court of Appeal held that the equitable principle applied: the defendant was legally liable to pay the rent and could have been sued, the plaintiff could not be sued but could be made to pay it, and the defendant was benefited accordingly.

The gist of the principle is, as was stated, expressed in the maxim *qui sentit commodum sentire debet et onus;* and while the limitation of "*commodum*" to a legal advantage has been emphasised, it is also apparent, e.g., that the operation of the principle is not limited to cases of contribution. *Bonner* v. *Tottenham etc. Building Society, supra,* was, as mentioned, not a case of apportionment; the claim was for indemnity, but was based on the same principle. One of the earliest cases of this kind was *Exall* v. *Partridge* (1799), 8 T.R. 308, in which the three defendants were the original grantees of a lease subsequently assigned to one of them, a coachbuilder. A distress was levied while the plaintiff's coach was on the premises, and it was seized; in order to recover it (the Law of Distress Amendment Act not having been passed) he paid the arrears; and the landlord's solicitor gave him a receipt for rent paid, on behalf of the three original grantees. This may have given him the idea of suing them all; true, he was nonsuited at the first trial, but obtained a rule which was made absolute. Lord Kenyon, C.J., observed that while one proposition—that if one person benefited by a payment made by another, assumpsit lay—was too wide, yet if a surety were called upon to pay, the money was paid to the use of the principal debtor, and might be recovered though there was no express request to pay. Here, there was a demand for rent *due from all*, so all could be made liable. This was distinguished in *England* v. *Marsden* (1866), L.R. 1 C.P. 529, in which the plaintiff, grantee of a bill of sale over the defendant's goods, had seized them under that bill but allowed them to remain on the premises for the benefit of the defendant. The borrower's landlord then distrained upon them and the plaintiff recovered them by satisfying the distress. But it was held that he had no claim for indemnity; there was no bailment as in the case of *Exall* v. *Partridge*, for the plaintiff had voluntarily left what had become his own absolute property on the premises for his own convenience, and no request could be implied from the defendant.

The leading case on implied right of indemnity in landlord and tenant matters is undoubtedly *Moule* v. *Garrett* (1870), L.R. 5 Ex. 132. The plaintiff in that case was the grantee of a lease for a term of 24¾ years from 1845; in the first year he had assigned it to E.B., who covenanted to indemnify him in respect of breaches of covenant; under other assignments, it was re-assigned to the plaintiff, and by him to F.B.; and in 1867 F.B. assigned to the defendants, who entered into similar covenants with F.B. There was no covenant between the plaintiff and the defendants, but when the lessor had recovered £75 from him in respect of breaches of repairing covenants committed during the defendants' tenure, he brought this action for indemnity. The case was strenuously argued, but it was held (Cleasby, B., dissenting) that the principle applied: the liability of an original lessee was that of a surety, and independently of contract he had his remedy over against those occupying the position of principal debtor. "The defendants having had the whole consideration for which his [the plaintiff's] liability was undertaken in the enjoyment of the estate during the time that the breaches were committed, ought to have paid": a very distinct recognition of the inter-connection between *commodum* and *onus*.

Our County Court Letter.

AGENCY OF EMPLOYEES OF COMPANY.

In a recent case at Redditch County Court (*W. & W. Brown Ltd.* v. *Redditch Palace Limited*), the claim was for £18 3s. 10d. as the price of coke sold and delivered. The plaintiffs' case was that they had supplied coal and coke for many years to the defendants' theatre. Orders were given by the manager or by one of the employees, and accounts had always been paid by the defendants down to May, 1937, when supplies ceased for the summer. No notification was received of any change in management, and from October to December, 1937, more coke was supplied under the same procedure as before. In January, 1938, an application for payment was made to the defendants at their registered office (the theatre) and a cheque for £16 11s. 2d. was duly received. Other supplies of coke were ordered and delivered, but in April, 1938, a letter requesting payment of the account remained unanswered. It transpired that in August, 1937, the defendants had leased the theatre for seven years to one Elliman. No notice was given to the plaintiffs, however, that the agency of the manager and the employee had terminated. In the absence of any knowledge of the change-over, the plaintiffs were accordingly entitled to succeed. The defendants' case was

that the grant of the lease of the theatre was common knowledge in the town and the change-over was published in the local newspaper. The claim was in respect of coke supplied from January, 1938 (five months after the change-over), until May, 1938, but the defendant company and its directors knew nothing of the matter. Evidence was called from the bank that the account for £16 11s. 2d. (in January, 1938) was not paid by the defendants' cheque. His Honour Judge Kennedy, K.C., held that, although the coke was supplied to and used by Elliman, the defendants were nevertheless liable for the price. Although the change-over occurred in August, 1937, the theatre was still the registered office of the defendant company, whose address was not changed until November, 1938. There was no actual or constructive notice of the lease to Elliman, and judgment was therefore given for the plaintiffs, with costs.

ACQUIESCENCE IN TRESPASS.

In *Lett* v. *Morris Jacomb's Ltd. and Thompson*, recently heard at Birmingham County Court, the claim was for an injunction to set back a fence, and £50 damages against the first defendants for breach of an implied covenant for quiet enjoyment, and £50 damages against the second defendant for trespass. The plaintiff's case was that, in 1927, he bought a dwelling-house, No. 82 Stechford Lane, from the first defendants, for £600. In 1928 the defendants sold the adjoining plot, and a shop erected thereon, to the second defendant, who had since occupied the shop personally or by his tenant. As the plaintiff had mortgaged his house on completion, he had no opportunity of examining his deeds until 1938, when he paid off the mortgage. It then transpired that the second defendant's shop had been built two feet over the plaintiff's boundary and that a 3-foot entry (separating the house from the shop) was wrongly being used by the second defendant, as it was on the plaintiff's land. The plaintiff therefore claimed that the fence, which was in line with the wall of his own house, should be set back in line with the wall of the defendant's shop—so as to transfer the entry from the curtilage of the defendant's shop to the curtilage of the plaintiff's house. The defence was that the plan on the plaintiff's conveyance contained a mistake, as the plaintiff had had all that was agreed to be sold to him. There was no right to an injunction, in view of the eleven years' acquiescence, and, as no complaint was made until September, 1938, no damage had been suffered by reason of interference with access of light and air. A counter-claim was made for the rectification of the plaintiff's conveyance. It was contended for the plaintiff that there had been no acquiescence by him, as he was long unaware of the facts of encroachment and trespass. On discovering the position, he had at once protested, and was not debarred from his remedy. See *Marker* v. *Marker* (1851), 9 Hare 16; *Bankart* v. *Houghton* (1860), 27 Beav. 431. His Honour Deputy Judge Dawson Sadler held that the defendants were entitled to rectification, but that the plaintiff was justified in bringing the action. He therefore gave judgment for the defendants on the claim and counter-claim, with no order as to costs. The sum of £21 (paid into court with a denial of liability) was ordered to be paid out to the defendants.

Practice Notes.

JURISDICTION OF ARBITRATOR.

An architect withheld his interim certificate—a condition precedent to payment—informing the builder that the employer was not satisfied with the work. Several interim certificates had been given. The builder, accordingly, referred the dispute to the arbitrator nominated under the contract, having given the employer notice to that effect. The quantity surveyors had reported to the architect that a sum of £10,667 was due, and the builder considered that it was the architect's duty to issue a certificate for that amount. The architect had said that his client was not satisfied and that, therefore, he could not issue a certificate. The arbitrator awarded that the employer should pay £7,500 forthwith and £3,167 later. Goddard, J. (as he then was), held that the arbitrator had jurisdiction to award the former, but not the latter sum.

Was the arbitrator entitled to award the payment of a sum of money although a condition precedent in the contract, viz., the issue of the architect's certificate had not been complied with? Yes, answered the Court of Appeal, Greer, L.J., concurring "with very grave doubt and hesitation"; he thought that the proper remedy was to apply to have the architect removed (*Prestige & Co., Ltd.* v. *Brettell* (1938), 55 T.L.R. 59).

Under this contract the arbitrator had power—

> "to open up, review and revise any certificate . . . save in regard to the said matters expressly excepted above, and to determine all matters in dispute which shall be submitted to him, and of which notice shall have been given as aforesaid, in the same manner as if no such certificate . . . had been given."

Slesser, L.J., said that the dispute referred to the arbitrator was twofold: (*a*) The architect had wrongly refused his certificate; (*b*) a sum of money was due. The arbitrator, by his terms of reference, was asked to settle *both* matters—not merely the question whether or not the certificate had been wrongfully refused. Any other view would mean "merely a circuity of action." Although the award for £3,167 was bad on the face of it, the two items were severable, and the award for £7,500 was valid.

MacKinnon, L.J., said that the substance of the award must be considered, not the form:—

> "If the reference was the question whether the architect ought to have issued the certificate, that clearly must include the question for how much that certificate should be" (at p. 63).

If the arbitrator had said: "the architect ought to have given a certificate for £7,500 and the amount ought to have been paid within fourteen days," the award would have been in due form; he had merely used a "much shorter set of words."

Greer, L.J., but for two authorities, would have held that without an architect's certificate there was no legal liability established by the contract, to pay any sum: the architect's certificate was a condition precedent to liability. Holding a man to his contract was not a technical matter which could be set aside by a court. Nor was a condition precedent to liability "a technical matter," but "a point of substance" (at p. 64).

The one authority is *Brodie* v. *Corporation of Cardiff* [1919] A.C. 337. In that case the corporation said that certain items were extras; that the contract provided that a written order by the engineer must be complied with before an "extra" could be established; that no orders had been given; and that the arbitrator could not dispense with any condition precedent. The arbitrator found that the engineer improperly refused to give orders for the extras, and for these extras he awarded certain sums to the contractor. The House of Lords held (Lord Sumner dissenting) that the arbitrator had power to award these items, although the engineer had not given the requisite orders. The real dispute referred to the arbitrator which his award was finally to determine, was whether the contractor should be paid for the work done.

The other authority is *Neale* v. *Richardson* (1938), 54 T.L.R. 530. There, under a building contract which provided that the decision of the architect should be final, and that the last quarter of the sum due should be payable on issue of the architect's certificate, Slesser, Scott and Clauson, L.JJ., held that the provision that the architect's certificate should be final might override the provision that certificate should precede payment.

To-day and Yesterday.

Legal Calendar.

15 May.—Benjamin Gregson deserves to be remembered among the more picturesque rogues of the eighteenth century. After committing a forgery, he went to Yarmouth, posed as an independent gentleman and got into the best society there. He was arrested while dancing with a lady at a public assembly, but escaped from gaol and, disguised as a sailor, got to Holland and later to Russia. He then went to France, where he formed an intimacy with a married lady whose husband, learning of his antecedents, removed her to London. Gregson incautiously fell into the trap, followed her and was arrested. Being convicted at the Old Bailey, he sawed off his irons and got out disguised as an attorney on the 15th May, 1787. He was dressed in a black suit, and carried a bundle of papers tied with red tape. I am sorry to say that he was recaptured by chance three days later.

16 May.—Sir Anthony Browne, who died on the 16th May, 1567, passed the last eight years of his life as a puisne judge in the Court of Common Pleas, where he had formerly sat as Chief Justice. The reason for this unusual step-down was that he was a Roman Catholic, and on her accession Elizabeth had preferred to have Protestants at the head of the courts. Nevertheless, shortly before his death he is said to have been offered the Great Seal, which he declined, "for that he was of a different religion from the state."

17 May.—On the 17th May, 1723, Christopher Laye, a barrister of Gray's Inn, was executed at Tyburn for high treason. An ardent Jacobite, he had been hatching a plot to seize the public buildings of London, secure the Hanoverian royal family and murder the ministers. He was betrayed by two of his female friends and died bravely without making any disclosures. His head was placed on Temple Bar. After it had fallen down it came into the hands of Dr. Richard Rawlinson, the Jacobite antiquary, with whom it was buried.

18 May.—Lord Chief Baron Macdonald died at his house in Duke Street, Westminster, on the 18th May, 1826. He was buried in Kensington Parish Church.

19 May.—That Sir Dudley Digges, Master of the Rolls, was not a mere lawyer appears from a rather curious provision in his will charging certain estates owned by him at Faversham with an annuity of £20 "to provide prizes for a foot-race open to both sexes," to be run in the neighbourhood every year on the 19th May. The exhilarating competition was held regularly from his death in 1639 till the end of the eighteenth century.

20 May.—Here is an Act to which the Royal Assent was given on the 20th May, 1774: "Whereas the malignant Fever that is commonly called The Gaol Distemper is found to be owing to the want of Cleanliness and fresh Air in the several Gaols in England and Wales . . . be it enacted . . . that the several Justices of the Peace . . . are hereby authorised and required to order the Walls and Ceilings of the several Cells and Wards . . . to be scraped and white-washed once in the Year at least, to be regularly washed and kept clean and constantly supplied with fresh Air by means of Hand Ventilators or otherwise . . . to order a Warm and Cold Bath or commodious Bathing Tubs to be provided . . . and to direct the prisoners to be washed . . . according to the Condition in which they shall be at the Time before they are suffered to go out of such Gaols . . ."

21 May.—On the 21st May, 1645, Charles I signed "a commission granted to Edward Littleton, Lo. Keep. of the Greate Seale, to raise a regiment of foot souldiers, consisting of gent. of the Inns of Court and Chauncy, and of all ministers and officers belonging to the Court of Chauncy, and their servants, and of gent. and others who will voluntarily put themselves under his command to serve his Majesty for the security of the Universitie and Cittie of Oxford."

The Week's Personality.

During the eighteenth century a wave of Scots broke over our legal world and among the most successful of the invaders was Sir Archibald Macdonald, lineal descendant of the Lords of the Isles. Born at Armidale Castle in the island of Skye, he began his foray on English soil early enough to be educated at Westminster and Christ Church. Passing on to Lincoln's Inn, he was called to the Bar and began promisingly by holding junior briefs in the Scottish appeals to the House of Lords. Apart, however, from the alliance of his countrymen he did not do so well, but he had agreeable manners and high conversational talents which made him a favourite in society, and by availing himself of these he attained a success which he owed "more to the petticoat than the gown." In 1777 he conquered Wales in the person of Lady Louisa Leveson-Gower, daughter of Earl Gower, afterwards Marquis of Stafford. A year after marrying this lady he took silk. A year later he became one of the Justices of the Grand Sessions in Wales. Before another ten years were out he was Attorney-General and a knight at the age of forty. In 1793 he climbed on to the Bench as Chief Baron of the Exchequer and there he stayed for more than twenty years, proving by his careful and impartial conduct that a good judge need not have had a large practice.

Oxford for the Courts.

After a brief period of confidential secrecy the press has been allowed to tell the world that in the event of war the Superior Courts will be scattered. The King's Bench Division will become a sort of official secret, melting into twelve unspecified towns "somewhere in England," while Chancery, Probate, Divorce, and the Court of Appeal will congregate in Oxford. It is nearly 300 years since British Themis, flying from the capital in a national emergency, set up her seat in the Philosophy Schools of the learned city attended by a depleted Bench and an attenuated Bar. When Charles I had summoned the judges thither, by far the greater number had defied the Parliament and obeyed him. Litigation must have been almost at a standstill, but they made a brave show and in Hilary Term, 1644, Sir Richard Lane, the head of the Royalist Bar, was sworn a Serjeant-at-Law in the Court of Chancery for the purpose of being appointed Chief Baron of the Exchequer. Then on the military side of the crisis the lawyers played their part. Lord Keeper Littleton was given a commission to raise an infantry regiment from among the gentlemen of the Inns of Court and Chancery and the officers of the courts. A tall, handsome, athletic old gentleman, who had been a great swordsman in his youth, he drilled them with great vigour till one morning he was caught in a storm while exercising his troops in Bagley Wood. A neglected cold turned into a fever and he died. The whole garrison turned out to render military honours at his funeral in the Cathedral.

Cat's Obituary.

For the second time in six months violent death has claimed a famous London cat. The Wimbledon magistrates, in solemn session, inquiring into the sad fate of Sir Richard Whittington, who once held the distinguished office of Lord Mayor's cat at the Mansion House, have condemned the hand that shed his blood to pay a fine of £20 and 12 guineas costs. But no judicial vengeance overtook the slayer of Nigger, the famous cat of Bow Street Police Court, who, after being run over in Long Acre last November, crawled back to die at the door of the court where he used to sit with so much state and importance.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Rights in Boundary Wall.

Q. 3638. A is the owner of a house subject to a demolition order from the local authority. A, in pulling down the house, exposes a portion of the adjoining house belonging to B so as to render it less capable of resisting the weather. The wall between the two properties is believed not to have been a party wall, but as will be appreciated in the case of old property the exact position is difficult to ascertain. Is A responsible for doing such work as may be necessary to cover up the exposed part of B's property ?

A. Somewhat similar facts to those set out in the query were considered in *Upjohn* v. *Seymour Estates, Ltd.* (1938), 54 T.L.R. 465. In that case, it appears to have been assumed (without any evidence on the point) that a wall, such as that in the present case, is necessarily a party wall. On this assumption, A is responsible for doing such work as may be necessary to cover up the exposed part of B's property.

Deed of Family Arrangement in the Nature of an Exchange—ASSENT—PROCEDURE—STAMP DUTY.

Q. 3639. By his will a testator devised his freehold properties Whiteacre to A and Blackacre to B and appointed C his executor. By a document having no testamentary effect and executed immediately prior to his death, the testator expressed the wish that Blackacre should be given to A and Whiteacre to B. The testator died in 1930, and, being desirous of carrying out the last wishes of the testator, A has since the death collected the rents of Blackacre and B has collected the rents of Whiteacre. No assent has yet been executed in favour of A or B. In view of the decision in *Re Duce and Boot's Contract*, it appears that a subsequent purchaser of either of the properties may go behind any assent which the executor may make and verify that the same is in accordance with the provisions of the will. It is proposed that a short deed of family arrangement should be executed by A and B and that C in pursuance of such arrangement should sign assents in favour of A in respect of Blackacre and in favour of B in respect of Whiteacre. Will the documents proposed be effective to give A and B respectively a proper title, and will *ad valorem* duty be payable on the assents ? Should both A and B join in each assent, and should the instrument recite the deed of family arrangement ?

A. If the assents be prepared without recitals, in our opinion, A and B will obtain proper titles, and that without putting the deed of family arrangement upon the titles. A purchaser can safely accept an assent as evidence that it is made in favour of the right person, " unless and until, upon a proper investigation by a purchaser of his vendor's title, facts come to the purchaser's knowledge which indicate the contrary " : per Mr. Justice Bennett in *Re Duce and Boot's Cash Chemists (Southern), Ltd.'s Contract* [1937] Ch. 642 ; 81 SOL. J. 651. We would observe that it would be no part of the duty of a purchaser to investigate the will of the testator (as distinct from the probate grant). We do not think that the transaction can in any way be regarded as in the nature of sales, rather it appears to us to be of the nature of an exchange. We suggest that the deed of family arrangement should be stamped accordingly and each assent adjudicated as not liable. It will be observed that we think the assents should be without recitals. In our opinion A and B should not join in each assent. We would observe that in our opinion it would be better, and probably less costly, to have simple assents (without recitals) in terms of the will, followed by an exchange by way of mutual conveyances. Such procedure could not possibly be open to any doubt.

Self-assent—PROBATE—ACKNOWLEDGMENT IN RESPECT OF—EFFECT.

Q. 3640. We have recently had before us an assent by a sole personal representative to the vesting of real property in himself, as the person entitled to the whole of the estate. This assent contains no acknowledgment for the production of the probate, which has been placed with the deeds of the real property. It has been suggested to us that a sole personal representative cannot give an acknowledgment in his own favour, and the Twenty-third Edition of " Prideaux " (vol. 3, p. 891), appears to support this view. Does a person who, in one capacity, affects to give a statutory acknowledgment in favour of himself in another capacity, give that acknowledgment in favour of " another," so as to bring s. 64 of the Law of Property Act, 1925, into operation ? It seems to us to be clear that the personal representative should not hand over the probate with the other documents of title to any purchaser. Can such a purchaser be driven to rely upon his " equitable right " to production ? Is it possible for the probate to be held by a person who can resist the purchaser's claim to this " equitable right " ? What value has this right to production, whether legal and equitable, in any case ? What words, if any, should be introduced into an assent by a sole personal representative in his own favour as devisee, in order to afford the fullest possible protection to any subsequent purchaser ? In the case before us we advised that an acknowledgment in respect of the probate should be given to a subsequent purchaser by a separate document, as we took the view that such acknowledgment could only be given by the personal representative in his capacity as such, which had ceased so far as regarded the property itself.

A. We are of opinion that an acknowledgment by a person in his own favour is ineffective. We do not think it can be said that a person acting in different capacities constitutes a " person " and " another " (person) for the purposes of s. 64 (1) of L.P.A., 1925. We agree that a probate should never be handed to a purchaser. Since A. of E.A., 1925, s. 36, a probate has ceased to be merely a solemn copy of a document of record ; it is now (owing to the endorsements thereon which are not recorded at the issuing registry) a muniment of title (*Re Miller and Pickersgill's Contract* [1931] 1 Ch. 511). We think, therefore, that there is an equitable right to the production thereof, and that this right could not be lost (if the probate was properly endorsed), as no person could hold it without notice (from the endorsements) of the equitable rights. The normal right of a purchaser is to have an acknowledgment enforceable at law, but this right is modified by L.P.A., 1925, s. 45 (7), *q.v.* The right to production is valuable, for the probate itself is the registry of the endorsements, which are not recorded in the issuing registry. We do not see that any words can usefully be introduced in a self-assent in lieu of the ineffective acknowledgment. It is agreed that a separate acknowledgment was indicated in our subscriber's case. We do not, however, think that the capacity in which an individual is acting is material to the effectiveness or otherwise of an acknowledgment. The test seems rather to be whether he is or is not retaining possession of documents within L.P.A., 1925, s. 64 (1).

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

The Doctrine of *Scienter*.

Sir,—If one of my learned brethren were to assume the worthy task of writing an article on "Absurdities and Injustices of the Law" he would be heavily engaged for some time to come, and we should all be much older before the results of his labour were published. Meanwhile, may I suggest that it is high time that the doctrine of *scienter* or proof of knowledge were abolished. Owners of dogs and other domestic animals should be liable for bites and other damage done by such animals without proof of *scienter*. All dogs may bite at times and all dogs should thus be considered in law to be equally dangerous. *Scienter* is often impossible to prove except through the expenditure of much time and trouble on the part of the plaintiff, and often it is impossible to prove *scienter* at all, when the unfortunate plaintiff gets nothing. All those who have suffered dog bites should be entitled to special damage *de facto* and without proof of negligence or anything else. General damages should never be awarded in cases of tort except for permanent personal injuries or death or for libels or slanders. One should be able to issue a writ for special damage in cases of tort.

17th May, 1939. G. W. R. THOMSON.

Reviews.

Modern Administration and Probate Practice and Law. By A. V. RISDON, Solicitor, and PERCIVAL HANCOCK, Solicitor. 1937. Demy 4to. pp. xlix and (with Index) 657. London: Sir Isaac Pitman & Sons, Ltd. £3 3s. net.

This is essentially a work for the solicitor. The declared object of the book is to bridge the ever-widening gulf between law and practice and in particular to increase the efficiency of the method by which estates are administered, and to give a detailed reproduction of office routine or papers for the young or inexperienced solicitor. It will be seen that the work sets out to embrace a very wide field, and that the authors would have difficulty in accomplishing this were the book cast in the usual form of a textbook. We have taken some time to review this work, and it has been given a thorough test in actual practice. As a result of this test we have no hesitation in saying that this book is invaluable for all practitioners other than those whose knowledge of probate law and practice is so extensive that there is nothing further for them to learn. Its style is vigorous and refreshing, and it is arranged in a logical and explicit manner. At first glance the reader might imagine that the book was so practical as to exclude discussion on the more abstract principles and points of administration and probate law but this is not the case. There is a proper table of cases and statutes and an extremely good index. The forms of account, which constitute an important part of the book, are well arranged and sufficiently annotated to be of real assistance. If the book, together with a set of estate duty forms, were given to an articled clerk he should be able (provided he had particulars of the estate at his disposal) correctly to complete any or all of the forms without having constantly to trouble his seniors in the office for assistance or explanation. The criticism might be raised that too much space in the book is occupied in going into unnecessarily small details. For instance, there is a form of letter to the Estate Duty Office enclosing legacy duty accounts for assessment, and also a letter to the Estate Duty Office returning observations answered. These, however, must prove very useful to the novice, who, of course, suspects even the most simple letter of presenting hidden difficulties.

Costs are dealt with at sufficient length and forms of bills are given which will be useful to the firm that has no regular costs clerk. A large part of the work is arranged in columns. In the case of forms, the various parts of the forms are set out in one column and opposite these will be found the notes. This makes reference easy. For example, in the part that deals with instruction for probate and administration, the left-hand column contains a list of facts required to be known, while the right-hand column contains notes explaining the purposes for which these facts are required. There are also forms of questionnaires summarising information required from clients, which could, if necessary, be given to a client to complete.

It is very difficult at the present day to produce a work that is substantially different from other works but which does not embrace a new scope. The authors have succeeded very well in this, and, as has been stated above, have done so by dealing with the matter on entirely practical lines and by abandoning any claim to producing a students' textbook. The book at first sight might invite hostile criticism from the conservative mind as a result of a superficial "modernity," but any resentment of this nature will vanish when its extreme efficiency and usefulness is put into actual practice.

Obituary.

MR. H. C. A. BINGLEY.

Mr. Henry Campbell Alchorne Bingley, formerly a Metropolitan Police Magistrate, died in London, on Monday, 15th May, at the age of seventy-seven. He was educated at Charterhouse and at Trinity College, Cambridge, and was called to the Bar by the Inner Temple in 1888, joining the South Eastern Circuit. In 1896 he was appointed Secretary to the General Council of the Bar, and he held that post until 1917 when he was appointed a Metropolitan Police Magistrate. Mr. Bingley sat at Clerkenwell until 1925, when he went to Marylebone, where he sat until his retirement in 1934.

MR. H. J. BURR.

Mr. Henry James Burr, solicitor, head of the firm of Messrs. Crump, Sprott & Co., of Victoria Street, S.W., died at Osterley, on Saturday, 13th May, at the age of sixty. Mr. Burr was admitted a solicitor in 1913.

MR. L. J. CLEGG.

Mr. Leonard Johnson Clegg, solicitor, senior partner in the firm of Messrs. Clegg & Sons, of Sheffield and Stocksbridge, died on Wednesday, 10th May, in his seventy-second year. Mr. Clegg was admitted a solicitor in 1888 and was awarded The Law Society's Prize. He was Official Receiver in Bankruptcy for the Sheffield District.

MR. R. S. CLIFFORD.

Mr. Richard Sutton Clifford, solicitor, head of the firm of Messrs. Cliffords, of Derby, died on Wednesday, 10th May, at the age of eighty-four. Mr. Clifford, who was admitted a solicitor in 1878, was President of the Derby Law Society in 1900. He became a member of Loughborough Town Council forty-two years ago, and he was a former Mayor of Loughborough.

MR. J. D. VALLANCE.

Mr. John Daniel Vallance, solicitor, senior partner in the firm of Messrs. Vallance & Vallance, of Essex Street, W.C., and Kingston-on-Thames, died on Saturday, 13th May, at the age of seventy-six. Mr. Vallance was admitted a solicitor in 1884.

CORRECTION.—Mr. H. F. MANISTY, K.C.

In the notice of the death of Mr. Herbert Francis Manisty, K.C., at p. 381 of last week's issue, we regret that it was inadvertently stated that he was a Bencher of the Inner Temple and Treasurer in 1910. Mr. Manisty was a member of both the Inner Temple and Gray's Inn, and it was of Gray's Inn that he was a Bencher and a former Treasurer.

Notes of Cases.

Court of Appeal.

Derrick *v.* Williams.

Greene, M.R., Finlay and du Parcq, L.JJ.
25th April, 1939.

Practice—Child Killed by Accident—Action by Father as Personal Representative—Money Paid into Court—Acceptance by Plaintiff—Subsequent Legal Decision as to Right to Damages for Loss of Expectation of Life—Fresh Action—R.S.C., Ord. XXII, r. 2 (2).

Appeal from Atkinson, J.

In July, 1935, a child nineteen months old was killed by a motor-lorry. His father, as personal representative, sued the owner, alleging negligence on the driver's part and claiming damages. The defendant paid £50 into court, stating by his notice that it was sufficient to satisfy the plaintiff's claim, if any, and denying liability. The plaintiff accepted this sum in satisfaction of his whole claim, and it was paid out to him. His costs were also taxed and paid. In June, 1937, the House of Lords reversed the decision of the Court of Appeal in *Rose* v. *Ford* [1937] A.C. 826. Consequently, in September, 1938, he commenced another action pleading the same facts and claiming for the child's estate damages for loss of expectation of life. The defendant pleaded that by reason of the plaintiff's acceptance of the money paid into court he was precluded from maintaining this action in respect of the same cause of action. This point having been set down for hearing as a point of law, Atkinson, J., decided it in favour of the defendant, but allowed the plaintiff to amend his statement of claim so as to plead that he was entitled to withdraw his acceptance of the sum paid in, and alternatively that the agreement by which he accepted it was made under a mistake of law or fact. He also ordered that no other issues arising in the action should be tried before the trial.

Greene, M.R., allowing the defendant's appeal, said that the general nature of the amendment had been indicated to the judge, but he had not before him any written amendment. Save possibly in simple cases it was important that the precise term of the amendment should be seen. The danger of allowing amendments without seeing what they were was accentuated if, as here, there was an order preventing the defendant from attacking the amendment by interlocutory proceedings when he did see it. The effect of the acceptance of money paid into court was that the proceedings were stayed (Ord. XXII, r. 2 (2)). It was said that the plaintiff's only course was to apply to have the stay removed and to have liberty to withdraw his consent, putting the original action back in the same position as if the money had never been taken out of court. Whatever were the circumstances in which such a step would be permissible (e.g., fraud) the court would not accede to such an application unless there were good ground. But it was correct to say that the procedural step of accepting money paid into court in satisfaction of a claim was one the consequence of which could not be got rid of by some separate proceeding. However, apart from the question of procedure, the amendment failed. The mistake of law relied on by the plaintiff was that the law laid down by the Court of Appeal in *Rose* v. *Ford*, *supra*, was correct. He said that having acted on the basis of a mistaken view of the law he was entitled, now that the law had been laid down by the highest tribunal, to have another attempt. On principle that proposition could not be accepted.

Finlay and du Parcq, L.JJ., agreed.

Counsel: *Serjeant Sullivan*, K.C., and *Nyholm-Shawcross*; *Etherton*.

Solicitors: *P. F. Walker*, for *Weightman, Pedder & Co.*, of Liverpool; *Savage Cooper & Co.*, for *G. H. Stock & Co.*, of Liverpool.

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

Hanson *v.* Wearmouth Coal Co. Ltd. and Another.

Scott, Clauson and Goddard, L.JJ.
11th May, 1939.

Gas Main Fractured by Mining Subsidence—Explosion Causing Damage—Liability.

Appeal from Hilbery, J.

In 1936 a house was damaged by an explosion caused by an escape from a 6-inch gas main fractured by a subsidence due to mining. The main had been placed 2 feet 7 inches below the surface of the street in 1881. The ground beneath it had dropped 5 inches for a distance of 20 feet in a general subsidence caused by the workings of the Wearmouth Coal Co. Limited. In 1935 there had been a subsidence in the same street and breaks had previously occurred. The occupier of the house claimed damages against the coal company and the Sunderland Gas Co. Each company served a third party notice on the other. The gas company admitted that the coal company had a right to let down the surface, withdrawing support from the main. Hilbery, J., gave judgment in favour of the coal company but against the gas company, who appealed, on the ground (*inter alia*) that he was wrong in holding them guilty of negligence or nuisance.

Goddard, L.J., dismissing the appeal, said that admittedly the gas company would be liable under *Rylands* v. *Fletcher*, L.R. 3 H.L. 330, unless they came within the exception established by *Rickards* v. *Lothian* [1913] A.C. 263. Those who brought a dangerous thing onto land and let it escape thereby causing damage were liable unless the escape was due to the conscious act of a third party without negligence on their own part. The gas company must have known that coal was being mined and subsidences were to be expected. They were warned by previous subsidences and never considered whether there were any precautions which they could take though the judge found there were precautions which they could have taken. The appeal failed on that point. The question remained whether the coal company were liable to the plaintiff. The gas company's admission concluded that matter. The coal company were committing no wrong to the gas company. There was no duty on the part of the coal company to the plaintiff unless a duty arose from some proximate relationship. The legal conception of such a duty was laid down in *Donoghue* v. *Stevenson* [1932] A.C. 562. The gas company had brought a dangerous thing to a place where they knew they had no right of support. The coal company were not liable to persons injured by the gas company's failure to perform their obligations. The position would have been different if the coal company had been bound to support the main. It had been argued further that as the plaintiff had not appealed against the decision in favour of the coal company, the gas company's appeal in respect of their right to contribution was not competent. The court did not agree with that. But in the result no question of contribution arose.

Counsel: *Le Quesne*, K.C., *Scott*, K.C., and *C. Fenwick*; *Evershed*, K.C., and *J. Charlesworth*: *Jardine*, K.C., and *J. Robson*.

Solicitors: *Hurd & Son*, for *Molineux, McKeag & Cooper*, of Newcastle-on-Tyne; *Cooper & Jackson*, of Newcastle-on-Tyne; *Lionel Wolfe & Hewitt*, of Newcastle-on-Tyne.

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

Onesimus Dorey & Sons, Ltd. *v.* Headley's Wharf, Ltd. and William Ashby, Ltd.

MacKinnon and du Parcq, L.JJ., and Macnaghten, J.
16th May, 1939.

Shipping—Ship at Wharf—Touching Bottom at Two Points—Damage by Sagging—Liability.

Appeal from Branson, J. (83 Sol. J. 134).

The plaintiffs owned the "Belvedere," a ship 198 feet long. The two defendant companies owned adjoining wharves in

Deptford Creek. The ship was chartered to carry a cargo of stone from Guernsey to Headley's Wharf, and was expected to be ready to berth on the morning tide on the 6th December, 1937. There was no room for her at that wharf before the departure from it of the "Multistone," which was to take place on the afternoon tide. The tides falling off and the "Belvedere" being fully loaded, the charterers knew that if she did not get into the creek in the morning she would be unable to do so for some days. Accordingly, by an arrangement between their representative on Headley's Wharf and the manager of Ashby's Wharf she went to the latter on the 6th December to unload 50 tons. The remainder was to be unloaded at Headley's Wharf after the "Multistone" had left. Ashby's Wharf being only 160 feet long the ship had to be berthed in such a way that she overlapped the end of Headley's Wharf. As the level of the river bed was different at the two wharves, the result was that her bow rested on the bottom at the top of Ashby's Wharf and her stern on the higher bottom at the top of Headley's Wharf leaving 140 feet of her keel unsupported except for mud. There was consequent damage by sagging. The shipowners sued the wharf owners for damages, contending that they were jointly responsible. Branson, J., having found that no one made any express representation or undertook any express responsibility with regard to the ship, dismissed the action.

MacKinnon, L.J., dismissing the plaintiffs' appeal, said that the defendants were said to be liable on the principle of *The Moorcock*, 14 P.D. 64. The question was whether the defendants were to be taken impliedly to have represented that they had taken reasonable care to ascertain that if the ship took the ground partly opposite one wharf and partly opposite the other, the bed of the river was in such a condition that no damage would result. The plaintiffs argued that they could avail themselves of the principle that a person who invited another to use his premises was liable for damage resulting from that use in consequence of the invitation. But there was no evidence that Headley's invited the plaintiffs to do anything. They only assented to a suggestion and could not be taken to have made any representation or guarantee as to the ship's safety if it were so moored. As to Ashby's, if they had been told of the ship's length and they had assented to part of her lying off Headley's Wharf it might have been said that they had somehow represented that it could be safely done. But the evidence showed that nothing was said about the ship's size. Nothing showed that Ashby's knew they were being asked for anything more than for a ship to lie at their wharf. Only when a ship lay partly off Ashby's Wharf and partly off Headley's Wharf was there danger.

du Parcq, L.J., and Macnaghten, J., agreed.

Counsel: *Pilcher*, K.C., and *Moscatta*; *Willink*, K.C., and *Willmer*, K.C.; *Sir Robert Aske*, K.C., and *Cyril Miller*.

Solicitors: *Holman, Fenwick & Willan*; *Keene, Marsland and Co.*; *W. C. Crocker*.

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Compton *v.* Bunting.

Morton, J. 20th April, 1939.

Nuisance—School—Music Lessons—Noise.

The plaintiff, who lived next door to a house used as a nursery kindergarten and preparatory school, sought an injunction to restrain its carrying on in such a manner as to cause a nuisance or annoyance by noise.

Morton, J., having referred to the passage of sound from the school music room to the plaintiff's dining-room, said that any noise heard in other rooms of the plaintiff was trifling. As the plaintiff could move to another room during music lessons which only took place on two days a week, she had not established such a nuisance as would entitle her to an injunction. The inconvenience was one which must be endured in modern life. Matters would be eased if the defendant at the beginning of each term gave the plaintiff a list of the exact hours when the lessons would take place and strictly adhered to them. She would be well advised not to increase materially the amount of noise in the music-room.

Counsel: *Christie*, K.C., and *J. Strangman*; *Harman*, K.C., and *G. Upjohn*.

Solicitors: *W. J. Homewood & Co.*; *Stafford Clark & Co.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

In re Antofagasta (Chili) and Bolivia Railway Co. Ltd.

Morton, J. 21st April, 1939.

Company—Issue of Debenture Stock—Date Fixed for Redemption—Power to Re-Issue—Companies Act, 1929 (19 & 20 Geo. 5. c. 23), s. 75.

The company issued four series of debenture stock, the first repayable only on a winding up at par, the second and third redeemable on the 1st January, 1940, and the fourth redeemable on the 1st July, 1960. In 1939, the debentures being still outstanding, a summons was issued to determine whether the company had power to redeem the second and third debenture stock and re-issue it with a different date for redemption.

Morton, J., said that the power to re-issue debentures did not enable the company to issue debentures which were not the same in their terms as the original debentures. It was not the intention of the Companies Act, 1929, s. 75, that debentures could be made perpetual by postponement of the date of redemption on a re-issue. The intention was only to give power to revive the original transaction, not to enter into a new and different one (see s. 75 (5)). The debentures re-issued or those issued in their place must contain the same provisions as to redemption. This company if it redeemed the second and third debenture stock could re-issue only the same debentures or others having the same provisions in every respect and could not bear a different date for redemption.

Counsel: *Wynn Parry*, K.C., and *W. G. Brown*; *Andrewes Uthwatt*.

Solicitors: *Slaughter & May*; *Coward, Chance & Co.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Guardian Assurance Co. Ltd. *v.* Sutherland and Another.

Branson, J. 15th March, 1939.

Insurance (Motor Car)—Policy avoidable for Misrepresentation—Request to substitute different Car in the Policy—Whether a new Contract—Statutory Right of Indemnity—Whether affected by Misrepresentation—Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), ss. 10, 34 (1) (*b*), (4).

Action claiming declarations under s. 10 of the Road Traffic Act, 1934, by way of avoiding a motor car insurance policy.

On the 17th March, 1938, the defendant, Sutherland, signed a proposal form to cover a car numbered BXD 1. The proposal having contained a number of misrepresentations, it was not disputed that the plaintiffs were entitled to avoid the policy on that account. On the 30th May Sutherland telegraphed to the plaintiffs to "cancel insurance [of BXD 1] to Lancia." The telegram was followed on the 10th June by a form signed by Sutherland asking for the Lancia to be substituted for BXD 1 in the policy. On the 17th June a telegram signed "Sutherland" was sent by the employee of a motor car company at the request of the defendant, Sidebotham, asking the plaintiffs to cover Sutherland on a car numbered EYT 114 as well as on the Lancia. That

telegram was followed on 20th June by a form in which Sutherland asked the plaintiffs to substitute EYT 114 for the Lancia in the policy. It was stated in the form that Sutherland was the owner of EYT 114 and that it was registered in his name. On receipt of the telegram of the 17th June the plaintiffs duly issued a cover-note in respect of EYT 114. On the 20th June, at 11.25, before the form signed by Sutherland on that day had reached the plaintiffs, Sidebotham, who was driving EYT 114, collided with a motor cycle combination carrying one Dimmock and his wife, who were injured. On the 6th July the Dimmocks sued Sutherland who was now abroad, and in September they brought an action against Sidebotham. The telegram of the 17th June was sent in the following circumstances: EYT 114 was the property of a motor car company to whom Sidebotham had introduced a man who that day decided to buy it. The purchaser, being unable to obtain immediate cover because he was a foreigner, and Sidebotham having no valid insurance policy, he and Sutherland arranged that EYT 114 should be represented as Sutherland's property and insured under his policy. The plaintiffs accordingly brought this action, and Sidebotham counter-claimed for a declaration that the plaintiffs were bound to indemnify him against the Dimmocks' claims.

BRANSON, J., said that Sidebotham contended first that, although the policy covering BXD 1 was obtained by misrepresentation, a new contract untainted by misrepresentation arose when the Lancia was substituted for BXD 1. But the form of the 10th June showed by its wording that the old contract was kept alive. The same applied when EYT 114 was substituted for the Lancia. But if that were not so, the cover-note in respect of EYT 114 was a new contract invalidated by misrepresentation. The defendants' second defence was that s. 36 (4) of the Road Traffic Act, 1930, conferred on anyone specified in a policy a statutory right to indemnity in respect of any liability which the policy purported to cover; and it was contended that a policy was still a policy issued "under the section," though obtained by misrepresentation, the statutory right to indemnity arising on the issue of the policy and remaining in force though the contract might be voidable or, indeed, avoided by mutual consent of the parties. Apart from authority, he could not so construe the section. It applied to "a person issuing a policy under this section," such a policy being defined in s. 36 (1) (*b*) as one "which insures such person . . . as may be specified in the policy in respect of any liability . . . arising out of the use of the vehicle on the road." A policy obtained by misrepresentation of material facts insured no one; and so s. 36 (4) could not apply to a policy so obtained. His lordship referred to *McCormick* v. *National Motor & Accident Insurance Union*, 40 Com. Cas. 76, and said that the effect of Scrutton, L.J.'s, judgment could only be avoided by saying that the defendant's action for indemnity would be not on the contract but on the statutory right conferred by s. 36. But s. 36 did not impose any statutory liability on the insurer: it only gave to "persons specified" a statutory right to sue on a contract which right, apart from statute, they did not possess. There was yet another reason why Sidebotham could have no protection under the policy: it stipulated that he must show that he was driving the insured car—i.e., EYT 114—on the insured's order or with his permission, but as Sutherland had no interest in the car he could neither give nor refuse permission to drive it. The action succeeded and the counter-claim failed.

COUNSEL: *A. T. Miller*, K.C., and *M. Berryman*, for the plaintiffs; *Valentine Holmes*, for the defendant Sidebotham. There was no appearance by or on behalf of the defendant Sutherland.

SOLICITORS: *Berrymans; Pritchard, Englefield & Co.*, for *Wilson, Wright, Earle & Co.*, Manchester.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Metropolitan Properties Limited *v.* **Jones.**

Goddard, L.J. (sitting as an Additional Judge).
15th March, 1939.

NUISANCE—MOTOR INSTALLED BY LANDLORDS IN UPPER FLAT—NUISANCE BY NOISE TO LOWER FLAT FOR THREE WEEKS THROUGH FAULTY INSTALLATION—REMEDY AGAINST LANDLORDS—LEASE OF LOWER FLAT ASSIGNED—DISAPPEARANCE AND NON-PAYMENT OF RENT BY ASSIGNEE—POSSESSION TAKEN BY ASSIGNOR REMAINING LIABLE FOR RENT UNDER LEASE—NO LEGAL INTEREST IN LOWER FLAT—WHETHER ENTITLED TO SUE IN NUISANCE.

Action for rent with a counter-claim for damages for nuisance.

The defendant, Jones, was the tenant for ten years of a flat of which the plaintiff company were the landlords. The defendant assigned his term to a person who subsequently left the flat, did not pay the rent, and could not be found. The defendant, having remained liable to the plaintiffs for rent under the covenant to pay rent in the lease, re-entered the flat, but was unable to secure a reassignment to himself of the term. While he was in occupation of the flat in those circumstances the plaintiffs installed in the flat above, for the convenience of its tenants, a small electric motor as part of a central heating system. His lordship found as a fact that there was for three weeks a noise amounting to a nuisance emanating from the motor, and awarded the defendant £21 damages on his counter-claim. The motor was installed in the flat above as a landlord's fixture, and the noise which it made during the three weeks in question was due to faulty installation. The plaintiffs having obtained judgment on their claim for rent, the issue before the court here reported referred only to the counter-claim.

GODDARD, L.J., said that the landlords, having installed the motor, must be taken to have let the flat above with a nuisance created by themselves. *Gandy* v. *Jubber* (1865), 5 B. & S. 485, and *St. Anne's Well Brewery Co.* v. *Roberts* were not relevant to that position, this not being a case of letting ruinous premises. Here there had been installed in premises something which, when used by the tenant in exactly the way in which it was supposed to be used—and which was the only way possible—caused a nuisance to those in an adjoining flat. If the motor had been one which could be run either fast or slowly, and the tenants had chosen always to run it fast so as to cause a nuisance, there being no nuisance if it ran slowly, different considerations would have arisen. In *Rich* v. *Basterfield* (1847), 4 C.B. 783, a landlord had installed a furnace which could be used either so as to smoke or so as not to do so. The landlord was held not liable for a nuisance arising from smoke, because it was caused by the tenant and not by him. There would probably be a cause of action against the tenant also in the present case, because the tenant must not use the machine if it caused a nuisance even though the landlord had installed it. In his (his lordship's) opinion, this case was not caused by the kind of case in which there was a temporary nuisance due to repairs being carried on in premises. The fact that the noise of this motor could be stopped by re-installation merely showed that the nuisance need never have been present at all. He (his lordship) regretted, however, that the defendant's claim failed on another point. He was bound by *Malone* v. *Laskey* [1907] 2 K.B. 141, which appeared to establish that the plaintiff in an action for nuisance had no cause of action unless he had a legal interest in the land alleged to be affected by the nuisance. The defendant here, in view of the assignment, had no legal interest in the premises in question. His concern with the flat, if concern it could be called, was his liability for rent under the covenant in the lease which arose because the assignee had not paid it. The defendant remained liable under the lease, but the assignee had the legal estate. The view which he (his lordship) was constrained to take derived much support from *Stait* v. *Fenner* [1912] 2 Ch. 504. The counter-claim accordingly failed.

COUNSEL: *P. E. Sandlands, K.C.*, and *A. E. Beecroft*, for the plaintiffs; *Cartwright Sharp*, K.C., and *S. P. J. Merlin*, for the defendant.

SOLICITORS: *McKenna & Co.*; *Richard Davies & Son.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Kent and Another *v.* East Suffolk Rivers Catchment Board.

Hilbery, J. 22nd March, 1939.

LAND DRAINAGE—TIDAL RIVER—BREACH IN WALL—FLOODING—WHETHER CATCHMENT BOARD OBLIGED OR MERELY EMPOWERED TO MAINTAIN SEA WALL—WORKS OF REPAIR NEGLIGENTLY EXECUTED—WHETHER MISFEASANCE OR NON-FEASANCE—LIABILITY—LAND DRAINAGE ACT, 1930 (20 & 21 Geo. 5, c. 44), s. 34 (1).

Action tried by Hilbery, J.

The plaintiffs were respectively the owner and tenant of a farm the lands of which were divided from the River Deben, which is tidal, by a wall. In December, 1936, at a time of gale and spring tides, the river broke through the wall, inundating some 50 acres of the farmlands. The defendants were the authority responsible for an area including the River Deben, and were a board constituted under the Land Drainage Act, 1930. The defendant board carried out certain work by way of repairing the breach. The plaintiffs, alleging that the work of repair was carried out negligently, brought this action claiming damages.

HILBERY, J., said that it was first argued for the plaintiffs that the defendants were not merely empowered but obliged to do the things which the Act authorised them to do. Section 34 (1) provided: "Every drainage board . . . shall have power (*a*) to maintain existing works . . . to cleanse, repair or otherwise maintain . . . any existing watercourse or drainage work . . ." His lordship concluded on the evidence that it did not establish any failure to maintain the wall by the board as a cause of the breach. It was next argued that the wall, being a sea-wall, was regarded by the common law as coming within the Crown's prerogative, which included a duty in the Crown, although of imperfect obligation, to maintain such defences. The plaintiffs relied on *Attorney-General* v. *Tomline* (1880), 14 Ch. D. 58, and contended that the duty on the Crown passed to the defendant board when constituted by the Act of 1930, and that it could be enforced against them, whereas it could not against the Crown. The plaintiffs also relied on *Symes and Others* v. *Essex Rivers Catchment Board* [1937] 1 K.B. 548; 81 SOL. J. 33. But in *Attorney-General* v. *Tomline*, *supra*, it was only established that, where a natural shingle bank formed a sea-wall, a private owner could be restrained at the suit of the Crown from making the shingle bank an insecure defence against the tide. In *West Norfolk Farmers' Manure Co.* v. *Archdale* (1886), 16 Q.B.D. 754, Lopes, L.J., said at p. 760 that *Tomline's Case*, *supra*, only applied to natural protecting banks or those erected by the Crown or its agents. There was no such evidence with regard to the wall in the present case, although there was evidence that it was artificial. In *Symes' Case*, *supra*, neither Greer, L.J., nor Eve, J., said anything to indicate that the Act of 1930 imposed as duties on catchment boards the acts which it empowered them to do. A consideration of Scott, L.J.'s, judgment showed that he was not considering the question of a duty to repair. The action was brought to prevent the drainage authority from closing a culvert which they considered must be closed for the safety of the wall. In *Smith* v. *Cawdle Fen Commissioners*, 82 SOL. J. 890; 160 L.T. 61, the Act of 1930 was treated as merely authorising boards constituted under the Act to carry out the works. The argument that the defendants were under a positive duty therefore failed. The plaintiffs next argued that while, if the defendants had done nothing, they (the plaintiffs) could, perhaps, not have complained, yet, having embarked on the work, they must do it efficiently, but had failed to do so. The defendants replied that the only complaint against them was insufficient exercise of their powers, and that they were not liable for mere non-feasance. His lordship referred to the speech of Lord Blackburn in *Geddis* v. *Bann Reservoir Proprietors* (1878), 3 App. Cas. 430, at pp. 455, 456, and to the judgment of Lush, J., in *McClelland* v. *Manchester Corporation* [1912] 1 K.B. 118, at p. 127, as showing the distinction between non-feasance and misfeasance. Those statements were discussed by Scrutton, L.J., in *Shippard* v. *Glossop Corporation* [1921] 3 K.B. 132, at p. 145. It was clear that, once an authority undertook work, they were under a duty to do it with reasonable care. His lordship then reviewed the evidence and concluded that, if the work had been done efficiently, the breach might have been closed within fourteen days. This was not a case of non-feasance; the defendants exercised their powers and did so negligently, one of the results being undue delay in closing the breach, with infliction on the plaintiffs of undue damage for which they were entitled to succeed in the action.

COUNSEL: *Russell Vick*, K.C., and *Robert Fortune* for the plaintiffs; *F. W. Beney* and *Hubert Hull* for the defendants.

SOLICITORS: *J. R. Welch, Son & Agar*, for *Turner, Martin and Symes*, Ipswich; *Sharpe, Pritchard & Co.*, for *Cobbold, Sons and Menneer*, Ipswich.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

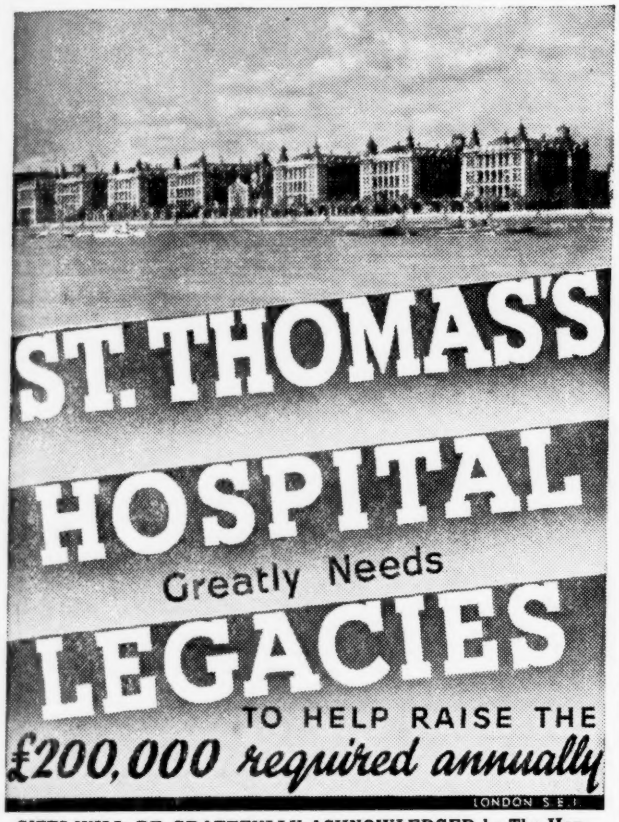
Donovan *v.* National Amalgamated Approved Society.

Lord Hewart, C.J., Humphreys and Lewis, JJ.
11th May, 1939.

INSURANCE (NATIONAL HEALTH)—AVAILABLE FOR BUT UNABLE TO OBTAIN EMPLOYMENT—PROOF BY HAVING HEALTH INSURANCE CARD FRANKED BY MINISTRY OF LABOUR—WHETHER SUFFICIENT—WHETHER PROOF TO APPROVED SOCIETY REQUIRED—NATIONAL HEALTH INSURANCE ACT, 1928 (18 & 19 Geo. 5, c. 14), s. 3 (3) (*b*).

Appeal case stated by a referee pursuant to the Arbitration Acts, 1889–1934, as applied to the National Health Insurance (Approved Societies) Regulations, 1938, on appeal from an arbitrator appointed under s. 163 of the National Health Insurance Act, 1936, together with the rules of the National Amalgamated Approved Society.

The appellant's husband, Nicholas Donovan, became insured as an employed contributor under the National Health Insurance Act, 1911, in July, 1912, and was admitted as a member of the National Amalgamated Approved Society. He paid contributions until March, 1931, and the society terminated his insurance on the 31st December, 1932. Mr. Donovan died in July, 1935, and his widow applied for a widow's pension under the Widows', Orphans', and Old Age Contributory Pensions Acts. That application was rejected by the Minister of Health on the ground that her late husband was not, at the time of his death, an "insured" person, which was a qualification to her right to a pension. For the period during which Donovan was available for but unable to obtain employment he took his health insurance card to the local employment exchange each week, and the card was "franked" by an officer of the Ministry of Labour, thereby indicating that the officer was satisfied that he was available for but unable to obtain work in that week. There was an arrangement between the Minister of Health and the Minister of Labour whereby health insurance cards could be franked at local employment exchanges. At the hearing before the arbitrator the appellant contended that the Act did not require proof to be given to the satisfaction of the approved society, and that proof was given at the time when the insurance cards were franked at the employment exchange. The respondent society contended that s. 3 (3) (*b*) required proof to be given by the insured person to the satisfaction of his approved society. The arbitrator held that the burden of proof required by the Act



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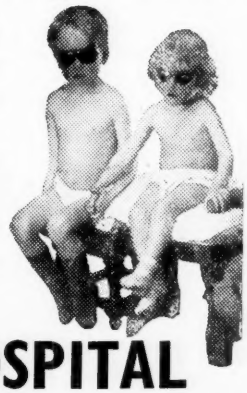

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had not been discharged by the appellant, and that the society was correct in determining the insurance of Mr. Donovan on 31st December, 1932. On appeal to him the referee stated a case for the opinion of the court. By s. 3 (3) of the National Health Insurance Act, 1924, as amended: "An insured person . . . (*b*) who proves . . . that throughout the period during which he had remained insured by virtue of . . . this section . . . he was available for but unable to obtain employment within the meaning of this Act . . . shall continue to be treated as an employed contributor insured under this Act until the expiration of a year from the date on which he would otherwise cease to be insured . . ." By virtue of other provisions of s. 3 the insurance of Donovan could be continued from year to year if s. 3 (3) (*b*) were satisfied..

LORD HEWART, C.J., said that the real question was whether it was true to say that there was here proof that the insured person was available for but unable to obtain employment as required by paragraph (*b*) of that sub-section? His (his lordship's) attention had been directed to the material statutes and to a document which he thought was of the greatest importance, namely, a circular entitled "National Health Insurance Act, 1928" (Circular A.S. 267), issued on behalf of the Minister of Health, which contained, under the heading "Appendix. Proof of Genuine Unemployment," various detailed provisions showing what ought to be done and in particular a clear exposition of what ought to be done in order to take advantage of the franking arrangements. In para. 5 of the appendix appeared the words: "The franking can normally be accepted by the society as conclusive evidence of genuine unemployment during the week to which it relates." Those words seemed to conclude the matter. The answer to the question put by the referee was, therefore, that proof to the Minister of Labour was such proof as was required by s. 3 (3) (*b*) of the Act.

HUMPHREYS and LEWIS, JJ., agreed.

COUNSEL: *A. T. Denning*, K.C., and *Douglas Potter*, for the appellant; *Valentine Holmes* for the Minister of Health. The National Amalgamated Approved Society did not appear and was not represented.

SOLICITORS: *McKenna & Co.*; *The Solicitor to the Minister of Health.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Pardy *v.* Pardy.

Langton, J. 27th March, 1939.

DIVORCE—DESERTION—SEPARATION DEED—FAILURE TO KEEP UP PAYMENTS—WHAT CONSTITUTES REPUDIATION—DESERTION HELD NOT CONTINUING—PETITION DISMISSED.

This was a wife's undefended petition for divorce on the ground of desertion for a period of three years immediately preceding the presentation of the petition. The parties were married in 1928. From the outset the marriage was unhappy. The husband kept his wife exceedingly short of money, stayed out at night, drank rather heavily and neglected her. In May, 1932, the parties entered into a deed of separation and thereafter lived apart from one another. For the first twelve weeks the husband paid the wife 25s. a week under the covenant in the deed, and then ceased payments almost entirely. Subsequently the wife committed adultery and asked for the discretion of the court to be exercised in her favour. In May, 1938, the wife brought the present petition alleging desertion from a date in 1934.

LANGTON, J., in giving judgment, said that the only case cited to him—a decision of his own (*Ratcliffe* v. *Ratcliffe*, 82 SOL. J. 455)—did not afford him assistance in determining the present issue, which he had considered from two aspects: (1) whether or not he could look at the circumstances attending upon the first break-up or division in the matrimonial home going behind the deed and saying that the initial division of the parties had been brought about by the desertion of the husband, and (2) whether or not if he (his lordship) was debarred from doing so, he could hold that, notwithstanding the existence of the deed, there had been such a repudiation of the deed upon both sides, and such circumstances existing for a period of three years immediately preceding the commencement of the proceedings, that the husband could be held to be guilty of desertion. His lordship referred to *Crabb* v. *Crabb* (1868), L.R. 1 P. & M. 601; *Fitzgerald* v. *Fitzgerald* (1869), L.R. 1 P. & M. 694, 698; *Pape* v. *Pape* (1887), 20 Q.B.D. 76; *R.* v. *Leresche* [1891] 2 Q.B.D. 418; *Watson* v. *Watson* [1938] P. 258; 82 SOL. J. 714; and *Jordan* v. *Jordan*, 83 SOL. J. 300. He (his lordship) would readily agree that, in the overwhelming majority of cases, desertion in fact took place between parties who were enjoying an existing state of cohabitation, but it was not beyond the bounds of quite ordinary imagination to conceive a case where the behaviour of a spouse separated under agreement would amount to desertion. If A, a husband, living apart from his wife, B, whether under a deed of separation or under a verbal agreement between the parties, were to announce to his wife that he intended to abandon residence in England, and to break every covenant in the deed, or every term of the agreement, thus leaving his wife completely penniless, and the wife, accepting this as a repudiation of the deed, were to proceed by way of summons before the magistrate, he, his lordship, could not doubt that the magistrate would find desertion against the husband. Moreover, if the husband, having carried out his expressed intention, were to return to this country three years later, he, his lordship, imagined that the Divorce Court would not find any difficulty in granting a decree on the ground of desertion. From a consideration of the cases it appeared to result that two principles emerged: (1) that where a deed of separation had been entered into in a *bonâ fide* manner between the parties the court could not go behind the deed to inquire into the facts which brought about the real division between the spouses; and (2) that where spouses were living apart under a deed of separation, the relationship began by consent, could not be changed into desertion by a mere refusal of one party to resume cohabitation or by a breach of the covenants of the deed. Such a metamorphosis could only be effected by a complete repudiation by one party, which had been accepted as such by the other, in such circumstances that the proper inference to be drawn from all the facts of the case was that the spouse by whom the repudiation was being accepted was willing to return to cohabitation and was both in a position to insist on his or her conjugal rights and was, in fact, reasserting them. If, for example, in the imaginary case of A and B, set out above, the wife, B, at the moment of receiving her husband's repudiation of the deed and notification of intended departure, were, in fact, living in adultery, the court before which such facts were presented might have a different duty as to pronouncing the husband a deserter. Applying those principles to the present case he, his lordship, did not feel that he had any material on which he could possibly find that the deed was not a *bonâ fide* agreement. It was additionally difficult to consider the husband guilty of desertion when the wife, who began her separation under the terms of the deed and ignored her husband's overtures in his letters, did not profess at any time to have made any suggestion that their married life should be resumed. The deed of separation barred the plea of desertion.

Petition dismissed.

COUNSEL: *H. B. Durley Grazebrook*, K.C., for the petitioner.

SOLICITORS: *Robbins, Olivey and Lake.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Societies.

The Law Society.

THE ANNUAL GENERAL MEETING.

The annual general meeting of the members of The Law Society will be held in the Hall of the Society on Friday, the 7th July, at 2 p.m.

THE PROVINCIAL MEETING, 1939.

The Provincial Meeting of The Law Society will be held this year at Worthing, on Tuesday and Wednesday, the 26th and 27th September. Particulars of the arrangements will be circulated to members at a later date. The Council announce that they will be glad to receive communications from members willing to read papers at the meeting, and will be obliged if members who contemplate contributing papers will let the Secretary know the subjects of them.

The Hardwicke Society.

A joint debate with the Gray's Inn Debating Society was held on Friday, 12th May, in the Middle Temple Common Room, the president, Mr. Lewis Sturge in the chair. Mr. Gilbert Harding (Gray's Inn) moved: "That the days of Britain's glory are no more." Mr. R. Jardine Brown (Hardwicke Society) opposed. There also spoke: Mr. L. S. Weinstock, Mr. Campbell Prosser, Mr. G. E. Crawford, Mr. Cusack, Mr. A. C. Douglas, Mr. Bootwala, Capt. Parker, Mr. Southall, Mr. Riddiford, Mr. Clidewell, Mr. Keckwick, Mr. C. O. Cummins, Mr. Harper, Mr. Wilkinson, Mr. Llewellyn Thomas (immediate past president) and Mr. Oppenheimer. The hon. Mover having replied, the House divided and the motion was lost by thirteen votes.

Christ Church Law Club.

ANNUAL DINNER.

The annual dinner of the Christ Church Law Club was held at the Café Royal, on Monday, 15th May. Those present included: Sir Thomas Inskip (president), Lord Porter (vice-president), Lord Justice Goddard (vice-president), Mr. Justice Hilbery (vice-president), Mr. E. V. Thompson (vice-president), The Under Treasurer of Gray's Inn, Mr. Godfrey Winn, Mr. S. N. Grant-Bailey (chairman) and Mr. G. E. Johnstone (hon. secretary).

Parliamentary News.

Progress of Bills.

House of Lords.

Administration of Justice (Emergency Provisions) Bill.
Read Second Time. [16th May.

Bognor Gas and Electricity Bill.
Read Third Time. [12th May.

Bristol Waterworks Bill.
Read First Time. [11th May.

Camps Bill.
Reported, without Amendment. [16th May.

City of London (Various Powers) Bill.
Commons Amendments agreed to. [16th May.

Coast Protection Bill.
Read Second Time. [16th May.

Croydon Corporation Bill.
Read Third Time. [11th May.

Droitwich Canals (Abandonment) Bill.
Reported, with Amendments. [11th May.

Folkestone Water Bill.
Committed. [9th May.

Limitation Bill.
Commons Amendments agreed to. [11th May.

London and North Eastern Railway (Superannuation Fund) Bill.
Read Third Time. [16th May.

London Building Acts (Amendment) Bill.
Read Third Time. [11th May.

London Midland and Scottish Railway Bill.
Reported, with Amendment. [9th May.

Marriage Bill.
Read First Time. [16th May.

Marriages Validity Bill.
Read First Time. [11th May.

Medway Conservancy Bill.
Read Third Time. [16th May.

Metropolitan Water Board Bill.
Reported, with Amendments. [11th May.

Milford Haven and Tenby Water Bill.
Committed. [9th May.

Ministry of Health Provisional Order Confirmation (Congleton) Bill.
Committed. [16th May.

Ministry of Health Provisional Order Confirmation (Margate) Bill.
Committed. [16th May.

Ministry of Health Provisional Order Confirmation (Matlock) Bill.
Committed. [16th May.

Public Health (Coal Mine Refuse) (Scotland) Bill.
Amendment reported. [16th May.

St. Nicholas Millbrook (Southampton) Church (Sale) Bill.
Reported, without Amendment. [16th May.

St. Peter's Chapel, Stockport, Bill.
Committed. [16th May.

Stroud District Water Board, etc., Bill.
Reported, with Amendments. [11th May.

Walsall Corporation Bill.
Read First Time. [11th May.

West Surrey Water Bill.
Committed. [9th May.

House of Commons.

Bognor Gas and Electricity Bill.
Read First Time. [16th May.

City of London (Various Powers) Bill.
Read Third Time. [11th May.

Colne Valley Water Bill.
Amendments considered. [15th May.

Croydon Corporation Bill.
Read First Time. [11th May.

Gosport Corporation Bill.
Read Third Time. [17th May.

Jarrow Corporation Bill.
Reported, with Amendments. [15th May.

Licensing (Declaration by Justices) Bill.
Read First Time. [17th May.

London Building Acts (Amendment) Bill.
Read First Time. [11th May.

London County Council (Money) Bill.
Amendments considered. [15th May.

Marriage Bill.
Read Third Time. [16th May.

Medway Conservancy Bill.
Read First Time. [16th May.

Methodist Church Bill.
Amendments considered. [15th May.

Military Training Bill.
Reported. [16th May.

Ministry of Health Provisional Order (Burnham and District Water) Bill.
Read Second Time. [17th May.

Ministry of Health Provisional Order (Eastern Valleys (Monmouthshire) Joint Sewerage District) Bill.
Read First Time. [12th May.

Ministry of Health Provisional Order (Falmouth) Bill.
Read First Time. [12th May.

Ministry of Health Provisional Order (Hailsham Water) Bill.
Read Second Time. [17th May.

Ministry of Health Provisional Order (Hemel Hempstead Water) Bill.
Read First Time. [12th May.

Ministry of Health Provisional Order (Heywood and Middleton Water Board) Bill.
Read First Time. [12th May.

Ministry of Health Provisional Order (Luton Water) Bill.
Read Second Time. [17th May.

Ministry of Health Provisional Order (Oxford) Bill.
Read First Time. [12th May.

Ministry of Health Provisional Order (Slough) Bill.
Read First Time. [12th May.

Ministry of Health Provisional Order (South Kent Water) Bill.
Read Second Time. [17th May.

Ministry of Health Provisional Order (Swaffham Water) Bill.
Read Second Time. [17th May.

North West Midlands Joint Electricity Authority Provisional Order Bill.
Read First Time. [15th May.

Reserve and Auxiliary Forces Bill.
Reported, with Amendments. [16th May.

Scottish Union and National Insurance Company Bill.
Amendments considered. [16th May.

Smethwick Oldbury Rowley Regis and Tipton Transport Bill.
Reported, with Amendments. [11th May.

South Staffordshire Water Bill.
Amendments considered. [15th May.
Southern Railway Bill.
Reported, with Amendments. [11th May.
Tiverton Corporation Bill.
Reported, with Amendments. [11th May.
Walsall Corporation Bill.
Read Third Time. [11th May.
Willenhall Urban District Council Bill.
Lords Amendments agreed to. [12th May.

Questions to Ministers.

SOLICITORS BILL.

Sir N. GRATTAN-DOYLE asked the Attorney-General whether the Government will, for the protection of the public against fraud by solicitors, add such a clause to The Law Society's forthcoming Solicitors Bill as will prohibit the creation of newly constituted firms of solicitors with only one principal or partner.

THE ATTORNEY-GENERAL: It is not the intention of the Government to introduce an Amendment to deal with the point which the hon. Member raises. In this connection I would refer him to an answer given to the hon. Member for Lincoln (Mr. Liddall) on 23rd November, 1938, in which I stated that my Noble and learned Friend the Lord Chancellor had been in communication with The Law Society and that he understood from them that this proposal had received their very careful consideration and was considered inexpedient. [10th May.

Legal Notes and News.

Honours and Appointments.

The King, on the recommendation of the Secretary of State for Scotland, has approved the appointment of Mr. WILLIAM DONALD PATRICK, K.C., Dean of the Faculty of Advocates, to be one of the Senators of His Majesty's College of Justice in Scotland in place of Lord Pitman, who has resigned. Mr. Patrick was called to the Scottish Bar in 1931 and took silk in 1933. He was elected Dean of the Faculty of Advocates in 1937.

The King, on the recommendation of the Lord Chancellor, has approved the following appointments under the Administration of Justice (Miscellaneous Provisions) Act, 1938: Derbyshire Quarter Sessions: Chairman, Mr. HENRY ST. JOHN DIGBY RAIKES, K.C.; Leicestershire Quarter Sessions: Deputy Chairman, Mr. CHARLES BERTRAND MARRIOTT, K.C. The appointments are to take effect from 5th May.

The Lord Chancellor has appointed SIR GEORGE SUTTON, Bart., to be a member of the Committee on the Law of Defamation, presided over by Lord Porter, in the place of Lord Kemsley, who has found himself obliged to resign his membership of the Committee owing to pressure of business.

The Lord Chancellor has appointed Mr. RICHARD GWYNEDD JONES to be the Registrar of Conway, Llandudno and Colwyn Bay, Llanwrst, Holywell and Flint and Rhyl County Courts, and District Registrar in the District Registry of the High Court of Justice in Rhyl, as from the 15th day of May, 1939. Mr. Jones was admitted a solicitor in 1919.

The Board of Trade have appointed Mr. TOM POLLITT to be Official Receiver for the Bankruptcy District of the County Courts holden at Northampton, Bedford and Luton, with effect from the 11th May, 1939, in the place of Mr. Thomas Bengough.

Notes.

Lincoln's Inn Library will be closed on Saturday, Monday and Tuesday, 27th, 29th and 30th May, and Saturday, 3rd June. From Wednesday to Friday, 31st May to 2nd June, it will be open from 11 to 4.

The King and Queen have consented to be present at a reception arranged by the County Councils Association, to be held on 4th July, at the London County Hall, in celebration of the jubilee of the county councils.

Mr. Charles S. Pryce, who was for thirty-six years Town Clerk of Montgomery, and has since been an alderman for twelve years and four times Mayor, has been made an honorary freeman. Mr. Pryce was admitted a solicitor in 1885.

The Bar beat the Barristers' Clerks in the annual cricket match at the Oval last Saturday, by 202 runs, after being sent in to bat. For the Bar W. A. Sime scored 155, and N. E. Wiggins was the most successful bowler, taking five wickets for 31 runs.

Five men who contributed to the cost of petrol for a motor car in which they travelled to work were fined at Cowbridge (Glamorgan) Police Court last Tuesday, and told that they were "acting in direct competition with the public service vehicle system."

An ordinary meeting of the Medico-Legal Society will be held at Manson House, 26, Portland Place, W.1, on Thursday, 25th May, at 8.30 p.m., when an address will be given by Dr. L. A. Weatherly, on: "Insanity defence in murder trials—A debatable practice of procedure."

The new president of the Auctioneers' and Estate Agents' Institute is Mr. Joseph Frederic Linney, head of the firm of W. H. Robinson and Co. (Manchester). He is a fellow of the Chartered Surveyors' Institution and chairman of the Manchester Society of Land Agents and Surveyors.

The twenty-fourth annual meeting of the Grotius Society will be held in the Pension Room of the Honourable Society of Gray's Inn, on Thursday, 25th May, at 4.45 p.m. An address will be delivered by Professor H. Lauterpacht, LL.D., on "Is International Law part of the Law of England?"

Mr. Justice Hallett, commenting to counsel at Manchester Assizes last week about actions not being ready for hearing, said "I regard it as something in the nature of a scandal when those responsible for the business of the court have arranged for an adequate number of cases to be in my list and I have to be kept three-quarters of an hour with nothing to do."

Mr. Percy Toothill, F.S.A.A., senior partner in the firm of Henry Toothill and Son, Incorporated Accountants, of Sheffield, has been elected President of the Society of Incorporated Accountants, and Mr. Richard A. Witty, F.S.A.A., partner in the firm of Button, Stevens and Witty, Incorporated Accountants, of Union Court, E.C.1, has been elected Vice-President.

A privileged visit to the Royal Naval College, Greenwich, and the National Maritime Museum, has been arranged in aid of King Edward's Hospital Fund for London. The journey will be made by river, and a steamer will leave Westminster Pier at 1.30 p.m., on Friday, 26th May. Tickets may be obtained from the Secretary, King Edward's Hospital Fund for London, 10, Old Jewry, E.C.2.

The B.B.C. announces that a special feature programme "A Day in the Law Courts" will be broadcast to schools on 26th May, at 3.10 p.m. in the National programme. It has been written by two women barristers who will themselves take part in the programme. On 8th June, in the Western programme, at 6.40 p.m., A. W. Ling and T. D. Corpe, solicitor, of Bristol, will discuss "The Law and the Farmer."

In the professional examinations of the Auctioneers' and Estate Agents' Institute of the United Kingdom, which were held in March last, there were 597 candidates, of whom 312 passed, being a percentage of 52.26. In the Final examination, Arthur Percy Mace, of Clapham, S.W., was placed first in order of merit, and was awarded the Institute Prize to the value of ten guineas in the form of text-books or instruments.

The Council of The Law Society have received as a presentation from Mr. Chas. E. Gwilt, of Wallington, Surrey, the following set of Records of Staple Inn: Pension Book, from 22nd May, 1751, to 17th December, 1790; Admission to Chambers, 15th February, 1728, to 14th November, 1776; Admission to Chambers, 18th January, 1777, to 4th March, 1791, and to 1808; Admission to Chambers, 1810–1880; and a Book of Common Prayer, printed by John Baskett, 4to. 1715.

The following staff appointments have been made in the Ministry of Health: The Minister of Health, the Right Hon. Walter Elliot, M.C., M.P., has appointed Mr. R. F. Tyas to be his Assistant Private Secretary, and has appointed Mr. D. C. L. Ward to be an Assistant Secretary (Acting) of the Ministry of Health. The Parliamentary Secretary to the Ministry of Health, Mr. Robert Bernays, M.P., has appointed Mr. J. F. Dodds to be his Private Secretary. The Secretary to the Ministry of Health, Sir George Chrystal, K.C.B., has appointed Mr. H. F. Summers to be his Private Secretary.

In the Divorce Court last Wednesday, says *The Times*, the President complained of what he described as the "obstruction" by the responsible authorities of a mental hospital in not supplying the medical information necessary

in divorce suits brought on the ground of incurable unsoundness of mind. The President said that all other mental hospitals assisted the court as much as they could in supplying information as to the condition of patients. So far as he knew, that hospital was the only one where difficulty had been experienced with regard to obtaining the information desired. That was not to be tolerated. The court was not at all pleased by the way it had been treated.

TITHE REDEMPTION COMMISSION.

Notice is given that the Treasury have fixed at 3½ per cent., as from the 17th of May, 1939, and until further notice, the rate of interest to be adopted in discounting future payments in respect of instalments of an annuity charged by the Tithe Act, 1936, for the purpose of determining, in accordance with the Redemption Annuities (Extinguishment and Reduction) Rules, 1937, the amount of consideration money to be paid for the redemption of the annuity.

On the basis of this rate of interest the amount at present required to redeem such an annuity is approximately twenty-four times the amount of the annuity. For an annuity of £1, for example, the amount required on the 1st of June next would be £24 1s. 8d., against £24 13s. 8d., at the old rate of interest.

SUMMER ASSIZES.

The following days and places have been fixed for holding the Summer Assizes, 1939, on the North Wales and Chester and North Eastern Circuits:—

NORTH WALES AND CHESTER CIRCUIT.—Mr. Justice LEWIS and Mr. Justice WROTTESLEY: Wednesday, 24th May, at Newtown; Saturday, 27th May, at Dolgelley; Thursday, 1st June, at Caernarvon; Wednesday, 7th June, at Beaumaris; Saturday, 10th June, at Ruthin; Thursday, 15th June, at Mold; Tuesday, 20th June, at Chester.

NORTH EASTERN CIRCUIT.—Mr. Justice ATKINSON and Mr. Justice TUCKER: Wednesday, 7th June, at Newcastle; Saturday, 17th June, at Durham; Tuesday, 27th June, at York; Monday, 3rd July, at Leeds.

Wills and Bequests.

Mr. William Ellis Beasley, solicitors' managing clerk, of Leicester, left £5,292, with net personalty £4,530. He left £250 to the Parochial Church Council of St. Andrew's Old Aylstone, Leicester; engravings and Georgian silver to Leicester Museum and Art Gallery; £100 to Leciester Royal Infirmary; and £50 to St. John Ambulance Association, Leicester.

Sir Charles Henry Morton, solicitor, of Liverpool, left £122,635, with net personalty £121,028. He left £1,000 to the Building Committee of Liverpool Cathedral, £500 to the Solicitors' Benevolent Association, and £500 to the Ladies' Aid Fund.

Alderman John Edward Pink, solicitor, of Southsea, left £48,962, with net personalty £41,970.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA. Mr	APPEAL COURT No. I. Mr.	MR. JUSTICE FARWELL. Mr.
May 22	More	Reader	Ritchie
„ 23	Reader	Andrews	Blaker
„ 24	Andrews	Jones	More
„ 25	Jones	Ritchie	Reader
„ 26	Ritchie	Blaker	Andrews

	GROUP A.		GROUP B.	
	MR. JUSTICE BENNETT.	MR. JUSTICE SIMONDS.	MR. JUSTICE CROSSMAN.	MR. JUSTICE MORTON.
DATE.	Witness. Mr.	Non-Witness. Mr.	Witness. Mr.	Non-Witness. Mr.
May 22	More	Andrews	Jones	Blaker
„ 23	Reader	Jones	Ritchie	More
„ 24	Andrews	Ritchie	Blaker	Reader
„ 25	Jones	Blaker	More	Andrews
„ 26	Ritchie	More	Reader	Jones

The Whitsun Vacation will commence on Saturday, the 27th day of May, 1939, and terminate on Tuesday, the 30th day of May, 1939, inclusive.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 25th May 1939.

	Div. Months.	Middle Price 17 May 1939.	Flat Interest Yield. £ s. d.	‡ Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	104½	3 16 9	3 13 5
Consols 2½%	JAJO	67¼	3 14 4	—
War Loan 3½% 1952 or after	JD	92⅞	3 15 4	—
Funding 4% Loan 1960-90	MN	105½	3 15 10	3 12 6
Funding 3% Loan 1959-69	AO	91⅜	3 5 5	3 8 11
Funding 2¾% Loan 1952-57	JD	90½xd	3 0 9	3 9 4
Funding 2½% Loan 1956-61	AO	84½	2 19 2	3 10 7
Victory 4% Loan Av. life 21 years	MS	105¾	3 15 8	3 12 2
Conversion 5% Loan 1944–64	MN	108	4 12 7	3 0 11
Conversion 3½% Loan 1961 or after	AO	93¼	3 15 0	—
Conversion 3% Loan 1948-53	MS	96¼	3 2 4	3 6 10
Conversion 2½% Loan 1944-49	AO	94	2 13 2	3 4 2
National Defence Loan 3% 1954-58	JJ	94½	3 3 6	3 7 8
Local Loans 3% Stock 1912 or after	JAJO	79¼	3 15 8	—
Bank Stock	AO	314½	3 16 3	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	77	3 11 5	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	81	3 14 1	—
India 4½% 1950-55	MN	105	4 5 9	3 18 7
India 3½% 1931 or after	JAJO	82	4 5 4	—
India 3% 1948 or after	JAJO	70	4 5 9	—
Sudan 4½% 1939-73 Av. life 27 years	FA	106	4 4 11	4 2 6
Sudan 4% 1974 Red. in part after 1950	MN	101	3 19 2	3 17 9
Tanganyika 4% Guaranteed 1951-71	FA	102	3 18 5	3 15 9
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	103½	4 6 11	3 0 0
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	85½	2 18 6	3 13 2
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	98	4 1 8	4 2 4
Australia (Commonw'th) 3% 1955-58	AO	81	3 14 1	4 10 3
*Canada 4% 1953-58	MS	106	3 15 6	3 9 0
Natal 3% 1929-49	JJ	95½	3 2 10	3 11 10
New South Wales 3½% 1930-50	JJ	93	3 15 3	4 6 2
New Zealand 3% 1945	AO	88	3 8 2	5 7 10
Nigeria 4% 1963	AO	104	3 16 11	3 14 10
Queensland 3½% 1950-70	JJ	86½	4 0 11	4 5 11
South Africa 3½% 1953-73	JD	97	3 12 2	3 13 2
Victoria 3½% 1929-49	AO	90	3 17 9	4 15 8
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	76½	3 18 5	—
Croydon 3% 1940-60	AO	88½	3 7 10	3 16 1
*Essex County 3½% 1952-72	JD	98	3 11 5	3 12 1
Leeds 3% 1927 or after	JJ	75	4 0 0	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	89	3 18 8	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	64	3 18 2	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	76	3 18 11	—
Manchester 3% 1941 or after	FA	75	4 0 0	—
Metropolitan Consd. 2½% 1920-49	MJSD	93	2 13 9	3 6 9
Metropolitan Water Board 3% "A" 1963-2003	AO	78½	3 16 5	3 18 4
Do. do. 3% "B" 1934-2003	MS	79½	3 15 6	3 17 4
Do. do. 3% "E" 1953-73	JJ	88½	3 7 10	3 11 10
*Middlesex County Council 4% 1952-72	MN	102½	3 18 1	3 15 0
* Do. do. 4½% 1950-70	MN	105	4 5 9	3 18 7
Nottingham 3% Irredeemable	MN	75	4 0 0	—
Sheffield Corp. 3½% 1968	JJ	95	3 13 8	3 15 9
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	97½	4 2 1	—
Gt. Western Rly. 4½% Debenture	JJ	102½	4 7 10	—
Gt. Western Rly. 5% Debenture	JJ	114½	4 7 4	—
Gt. Western Rly. 5% Rent Charge	FA	108	4 12 7	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	102½	4 17 7	—
Gt. Western Rly. 5% Preference	MA	84½	5 18 4	—
Southern Rly. 4% Debenture	JJ	97½	4 2 1	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	101½	3 18 10	3 18 3
Southern Rly. 5% Guaranteed	MA	108	4 12 7	—
Southern Rly. 5% Preference	MA	93½	5 6 11	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.